EASTERN AIRLINES LABOR DISPUTES EMERGENCY BOARD

(101-8)

HEARING

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

H.R. 1231

TO DIRECT THE PRESIDENT TO ESTABLISH AN EMERGENCY BOARD TO INVESTIGATE AND REPORT RESPECTING THE DISPUTE BETWEEN EASTERN AIRLINES AND ITS COLLECTIVE-BARGAINING UNITS

MARCH 7, 1989

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SUBCOMMITTEE ON AVIATION

HEARINGS AND MARKUP ON H.R. 1231

DIRECTING THE PRESIDENT TO ESTABLISH AN EMERGENCY BOARD FOR THE EASTERN AIR LINES LABOR DISPUTE

10:00 A.M.
TUESDAY MARCH 7, 1989
2167 RAYBURN HOUSE OFFICE BUILDING

SUMMARY OF SUBJECT MATTER

At the hearing and markup the Subcommittee will consider H.R. 1231, a bill directing the President to establish an emergency board to investigate and report on the dispute between Eastern Air Lines and its employee representatives.

I. Background Information on Eastern Airlines

(1) Basic Profile. Eastern Airlines, the country's sixth largest airline, is a wholly owned subsidiary of the Texas Air Corporation which also owns and operates Continental Airlines. The combined Texas Air airlines represent the largest airline company in the United States. Eastern's operating revenues in 1988 were $3.8 billion. Its annual payroll is approximately $1 billion.

Eastern operates approximately 250 large jet aircraft between 80 U.S. cities and 38 points in the Caribbean, Mexico, and Latin America. Much of Eastern's service is north-south in the eastern United States. In 1988, 35.6 million passengers flew on Eastern, about 7.5% of the total passengers flying on U.S. domestic airlines.

As of last week, Eastern had approximately 30,000 employees. These include 3,600 pilots, 8,500 mechanics and ramp service personnel, 4,800 flight attendants, and another 13,500 non-contract personnel.

One-third or 10,200 of Eastern's employees are located at Miami, Eastern's corporate headquarters. Atlanta, Eastern's major hub, is the base for 6,700 employees. Another 3,200 employees are located in the New York area.

Eastern had net losses of $335 million in 1988 and $182 million in 1987. Eastern contends that at the time of the strike it was currently losing $1 million per day.

The following table describes Eastern's finances and operations during the past six years.

Eastern Air Line's Finances and Operations

1983-1988

	1983	1984	1985	1986	1987	1988
Operating revenue	$3.94b	$4.36b	$4.82b	$4.53b	$4.53b	$3.81b
Net Profit (loss)	($184m)	($38m)	$6m	($131m)	($182m)	($335m)
# of aircraft	283	284	288	286	284	250
Employees	38,150	39,514	39,597	42,054	43,776	31,200
Passengers	37.0m	38.1m	41.8m	42.7m	44.7m	35.6m
Departures	514t	538t	557t	558t	528t	380t

Source: Air Transport Association 1983-1987; Eastern Air Lines, 1988
b-billion, m-million, t-thousand

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The following Table compares Eastern's overall labor costs with those of other carriers.

LABOR EXPENSES OF MAJOR CARRIERS

Airline	Labor Expenses Per Available Seat Mile
American	2.70 cents
Continental	1.34
Delta	2.91
Eastern	2.95
Northwest	2.27
Pan Am	2.43
Piedmont	3.40
TWA	2.19
United	2.57
US Air	3.72
Majors Average	2.52

Source: Aviation Daily, 3rd Quarter 1987 (before Eastern made major reductions in its workforce)

Looking at Eastern's place in the industry, Eastern is one of the top eight carriers, which together now carry 91.7% of total domestic revenue passenger miles. This is an increase from the 80.4% share of the top eight carriers in 1978. The carrier by carrier market shares are as follows:

Carrier		1987 Percentage of Revenue Passenger Miles
Texas Air		20.3%
Continental	10.2	
Eastern	10.1	
United		17.3
American		15.4
Delta		13.0
US Air		8.9
Northwest		7.9
TWA		6.4
Southwest		2.5

Source: Congressional Budget Office

(2) Eastern's operation since the takeover by Texas Air. Texas Air acquired Eastern in November of 1986. New management was installed with the announced objective of restoring Eastern's profitability, primarily by realizing reductions in the company's labor costs.

From the outset there was severe acrimony between the new management and Eastern's unions. After an FAA investigation of Eastern, Administrator McArtor reported to the Secretary of Transportation in May 1988 that the FAA had found that Eastern's labor-management dispute was so severe that it was limiting the company's ability to comply with safety regulations. The FAA also found that the discord and complexity of the labor-management dispute at Eastern was much deeper and more intense than had been the case at other carriers with labor disputes.

Administrator McArtor found that Eastern's "Management and employees alike exhibited a long-held deep feeling of internal distrust and a near total lack of constructive communication...both sides have stated that they are 'at war'".

There appear to be several causes for the labor management tension. The first involves management's day to day relations with employees. As summarized by DOT after its investigation in May, 1988:

> "The Barlow Group (of FAA) and virtually every officer and employee interviewed at Eastern noted the palpable labor-management tension at the company. Management views labor generally as undisciplined and the company's "corporate culture" as unconducive to efficiency and profitability. Pre-Texas Air management, in the view of current officers, permitted abuse of work rules, thus losing labor's respect. Present management's attempts to increase accountability are viewed by the employees as punitive, intimidating, and vindictive. Eastern realizes that failure to remedy this problem could have grave financial consequences."

Another cause of management-labor tension has been Eastern's actions to downsize the company and sell valuable assets. Eastern justifies these transactions as a necessary program to build liquidity for a strike. The unions have interpreted the transactions as efforts to break the union by increasing the profitability of Texas Air(and the largely non-union Continental) at the expense of Eastern, putting pressure on the employees to agree to wage cuts, and taking the most valuable assets out of the company, leaving the company financially unviable and a candidate for a liquidation.

The transactions in questions included the sale of Eastern's computer reservation system marketed to travel agents, System One, to a seperate subsidiary of Texas Air for a one hundred million dollar note due in 2012 bearing interest at six percent; the sale of Eastern's aircraft, gates, and slots to Continental; the payment of management fees by Eastern to Texas Air; an effort to transfer the Eastern Air Shuttle to a seperate Texas Air subsidiary for $225 million dollars of which $125 million was to be paid in cash (This transaction fell through after it was enjoined by the courts, following which Eastern entered into an agreement to sell the shuttle to Donald Trump for $365 million); and the payment of fees by Eastern to a subsidiary of Texas Air for the purchase of fuel. As indicated by the chart above, by the end of 1988 Eastern has laid-off 13,000 employees and sold or more than 10% of its fleet (and grounded additional aircraft) since the acquisition by Texas Air. Further downsizinig has occurred in the first two months of 1989.

A final source of labor-management tension has been caused by collective bargaining process itself.

By way of background there are four unions representing employees at Eastern. The International Association of Machinists and Aerospace Workers (IAM) represents the aircraft mechanics and ground service personnel (aircraft cleaners, baggage handlers, and fuelers). At the time of the strike IAM represents a total unit of approximately 8,500 personnel.

The Air Line Pilots Association (ALPA) represents the pilots, first officers, and flight engineers that fly Eastern's 250 airplanes. This is a unit of approximately 3,600 employees.

The Transport Workers Union (TWU) represents 4,800 flight attendants who carry out safety and service responsibilities on all Eastern flights.

In addition there are approximately 13,500 non-contract personnel who are not under a collective bargaining agreement. These include ticket agents, reservation agents, clerical and management employees.

The following summary of collective bargaining does not attempt to describe the positions which the parties have been taking in the most recent negotiations. Some of the parties have been unwilling to share the details of their position with us, and in any event positions may change quickly during the present crisis period. The following summary is therefore limited to the basic positions which have been taken during the negotiations.

(a) International Association of Machinists Negotiations The collective bargaining agreement between Eastern and the IAM expired December 31, 1987; however initial contract proposals had been exchanged in October 1987. Negotiations, under the auspices of the National Mediation Board have been underway since November 1987, with little appreciable progress toward an agreement or a new contract.

The Committee has not been provided a detailed account of the two sides' contract proposals. In recent weeks, a number of offers and counteroffers have been exchanged and the details have often been held close to the vest. The general approaches of Eastern and the IAM have been as follows.

Eastern is seeking wage and benefit reductions from the IAM workforce totaling approximately $150 million on an annual basis. Eastern has proposed that most of these reductions come in cuts in the pay of baggage handlers, fuelers, and aircraft cleaners who would be reduced from the current top pay of $15 per hour to $10 per hour. Reductions for aircraft mechanics would be proportionately less, reducing the current top pay of nearly $19 per hour to either $18, $16, or $14 per hour depending on skill. Eastern is also proposing to pay for the training of non-mechanic IAM members to become mechanics and hence be paid at a higher rate. Eastern is also seeking adjustments in the IAM pension plan.

Eastern believes that the wages it pays to IAM employees are out of line with what other airlines pay to similar employees. Eastern believes the current wage levels make it very difficult for them to compete and make a profit in the current deregulated airline environment.

The IAM wants to make little or no wage and benefit concessions for its current members. It has been reported that IAM is proposing some wage increases. IAM has proposed lower wage rates for new entry workers and work rule changes to increase productivity, in order to reduce Eastern's costs.

The IAM believes that the reason for Eastern's lack of competitiveness and profitability is not so much its labor costs but that the company has been poorly managed for a long period of time. They point out that Continental, which is also part of Texas Air, lost almost as much as Eastern last year despite Continental's low labor costs. Continental had net losses of $315 million in 1988 and $258 million in 1987.

The IAM also believes that the current owners and managers have taken valuable assets, such as the computer reservations system, out of Eastern to the airline's financial detriment.

(b) Air Line Pilots Association and Transport Worker Union Negotiations

The contracts between Eastern and its pilot and flight attendant units expired December 31, 1988.

Negotiations with the pilot group have focused on the circumstances in which jobs would be guaranteed to the pilots. ALPA has been seeking a five year guarantee of jobs by Texas Air Corporation even in the event of an Eastern bankruptcy, but Texas Air has not been willing to guarantee jobs through a bankruptcy. Texas Air has indicated it will guarantee pilot jobs if Eastern is operating, but not if Eastern shuts down and goes into bankruptcy.

Wage concessions are not being sought from the pilot unit, though productivity gains are being sought. Fringe benefit adjustments have also been an issue.

Negotiations between Eastern and the flight attendants have not progressed very far since December 31 but the issues mostly focus on productivity increases.

At the time of the strike, no agreement had been reached on these two contracts.

II. Prior Involvement in the Eastern Situation by the Committee on Public Works and Transportation Committee and Other Executive Branch Agencies

(1) Committee on Public Works and Transportation and Department of Transportation.

Concern over the Eastern situation led the Committee on Public Works and Transportation to report House Concurrent Resolution 262 on May 11, 1988. The resolution had 213 cosponsors, including the late Chairman Howard, the then Chairman of the Subcommittee on Aviation, Congressman Mineta, the ranking Republicans on the full and subcommittees, Congressmen Hammerschmidt and Gingrich, and most other members of the Committee. The Resolution called on the Secretary of Transportation to conduct a full investigation of the management of Texas Air Corporation and Eastern Air Lines to determine the effect of this management on the "public interest" as defined in the Federal Aviation Act, including safety, and the encouraging of fair wages and equitable working conditions. The investigation would serve as a basis for the Department of Transportation to decide other cases in which it would be called upon to make public interest determinations involving Eastern and Texas Air.

While H. Con. Res. 262 was pending the Department of Transportation and the Federal Aviation Administration undertook extensive investigations of the "fitness" of Eastern, including an examination of Eastern's compliance with safety regulations, its financial fitness, and its general willingness and disposition to comply with government regulations. In May of 1988 the Department of Transportation completed its investigation, and determined that labor-management tensions at Eastern were interfering with the company's ability to comply with safety regulations. The Secretary of Transportation appointed former Secretary of Labor William Brock to work with all parties at Eastern to rebuild lines of communication and cooperation inside the company to further safety.

In June 1988, Congressmen Anderson, Mineta and Gingrich wrote to the Secretary of Transportation, to express their dissatisfaction with the DOT investigation for not reaching conclusions on important issues. However the signers of the letter took the position that safety must be given top priority. They felt that if the investigations called for by H. Con. Res. 262 went forward, labor and management would devote their energies to a contentious proceeding at the Department of Transportation. Rather than have this occur, the Members signing the letter decided that they would not go forward with H. Con. Res. 262 at that time, but would encourage management and labor to focus their energies and resources on working with Secretary Brock to improve the safety of Eastern's operations.

Negotiations with Secretary Brock resulted in the Brock Agreement which provided that a variety of safety related issues would be the subject of meetings and dialogue between the management and employees of the airlines.

Between July and November 1988, a series of meetings took place involving the highest levels of Eastern management and its labor unions. In these meetings a variety of contentious safety issues were aired. The Brock Agreement also set in process meetings at the local level between management and employees to work through local safety issues. Also established were management/pilot working groups to work through issues of concern to pilots.

In November 1988, the Air Line Pilots Association announced "abandonment" of the "Brock process". What this meant was that the ALPA no longer saw the need for or benefit of the meetings involving the highest levels of management and employee groups. The local arrangements and the management/pilot working group's activities continued.

Subcommittee Staff discussions with FAA officials indicate that the nuts and bolts work of the Brock process has continued despite the discontinuance of the meetings of the high level principals.

(2) Federal Aviation Administration Actions With Respect to Eastern

Since early 1986, Eastern Air Lines has been the subject of enhanced scrutiny by the Federal Aviation Administration. This scrutiny has been the result of two factors.

First, in early 1986 the FAA concluded an in depth inspection of Eastern that resulted in an assessment of a $9.5 million civil penalty for 78,000 individual violations of safety regulations and standards. These violations occurred before the Texas Air acquisition. Since that time, the FAA has exercised an increased level of routine safety surveillance of Eastern to ensure that the problems identified in 1986 were corrected. In 1987-1988, the FAA conducted other special safety inspections of Eastern following up on the problems identified in the early 1986 inspection, and problems associated with delayed and deferred maintenance at Eastern Airlines. These inspections resulted in a subsequent civil penalty of $800,000.

The second reason for the FAA increased surveillance of Eastern was management/labor strife at Eastern. The FAA increases surveillance at any airline which is in the throes of management/labor difficulties because of the potential diversion of attention from safety responsibilities. This increased surveillance has been in place for approximately a year and a half. As has been discussed, in the Spring of 1988, the FAA issued a report (known as the Barlow Report) which found that the relationship between management and Eastern could result in future safety problems.

In January of this year, FAA officials met with the Committee's Aviation staff and informed them that Eastern Air Lines was as compliant as other airline with the FAA safety regulations and procedures and that there had been dramatic improvement in Eastern's safety performance. The FAA officials stated they were comfortable with Eastern's approach, attitude and activity for safety and regulatory compliance.

The FAA developed its own contingency plan for the end of the National Mediation Board's 30-day cooling off period. In addition to the usual contingent of approximately 20 inspectors assigned directly to Eastern, the FAA has put Flight Standard District Offices around the country on alert to monitor Eastern. These offices are expected to respond with special safety inspections, as needed during the period of the strike.

II. Legal Framework

Labor relations involving airlines and railroads are governed by different legal requirements than other industries. Under the Railway Labor Act which governs airline and railroad labor, the parties to a dispute are not free to engage in strikes or other self-help immediately after the expiration of collective bargaining agreement. Rather, the Act requires the parties to continue to negotiate, with mediation by of the National Mediation Board until NMB declares an impasse. Following the declaration of an impasse, there is a thirty day cooling off period, at the end of which management is free to impose new conditions of employment and the union is free to strike.

By contrast, in industries which are governed by the National Labor Relations Act, the parties are generally free to strike or engage in other self-help when a contract expires.

The rationale for making it difficult for airline and rail unions to strike is that transportation is critical to the national economy, and strikes should be avoided, if at all possible.

The Railway Labor Act also provides for appointment of a Presidential Emergency Board which can further delay the rights of parties to strike or impose their own contractual terms. Section 10 of the RLA provides that if the NMB determines that a dispute "threatens substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service." NMB shall so notify the President who may, in his discretion create a board to investigate and report concerning such dispute. The Presidential board is directed to make a report to the President in thirty days. Section 10 further provides that from the time the Presidential board is created until thirty days after the board has made its report to the President the parties to the dispute are required to continue to operate under the prior collective bargaining agreement.

In industries governed by the National Labor Relations Act there is also a provision for a sixty day cooling off period, if the President declares a National Emergency. This provision has not been used in recent years.

In the airline industry, NMB has recommended creation of an Emergency Board to the President in more than thirty airline disputes. In every instance the President accepted these recommendations and appointed Boards. The most recent case in which a board was appointed under this provision was in 1966. Additionally, in 1978 Congress directed the President to appoint a board in a dispute involving Wien Alaska Airlines.

Emergency Boards have been appointed more recently in the Railroad Industry. For example, in 1986 a Board was appointed in a dispute involving Maine Central Railroad and the Brotherhood of Maintenance of Way Employees.

Another difference between the Railway Labor Act and the National Labor Relations Act is that under a recent Supreme Court decision, (Burlington Northern Railroad vs. Brotherhood of Maintenance of Way Employees) unions in industries governed by the Railway Labor Act, are free to engage in secondary activity against other companies in the same industry. Secondary activity is activity against a company that is not involved in the primary dispute.

Under the National Labor Relations Act, activity against an employer other than the primary employer is permitted only if the other employer is in some manner "aligned" with the primary employer. For example, a secondary employer might be considered to be aligned with the primary employer if both employers were subsidiaries of the same company, and work was exchanged between the two subsidiaries.

III. H.R. 1231

Early last week it was announced the National Mediation Board had recommended to the President that he appoint a Board under Section 10 of the Railway Labor Act to report on the Eastern dispute. On March 2 Chairman Anderson, Chairman Oberstar and 35 other members wrote to the President urging him to follow the NMB's recommendation and appoint a Board. On March 3 the President announced that he would not appoint a Board.

On March 2, H.R. 1231 was introduced by Chairman Anderson and Oberstar. The bill directs the President to appoint a board under Section 10 of the Railway Labor Act. The board would be directed to report to the President on all pending labor disputes between Eastern and its unions, including the disputes involving the International Association of Machinists, the Airline Pilots Association and the Transport Workers Union.

Under the bill, the Section 10 procedures would apply as soon as the President appointed a board. Under Section 10 the board would have 30 days to make recommendations to the President, and during that 30 days and an additional 30 days the parties would be required to operate under this previous collective bargaining agreements. At the end of the 60 days, there would be a return to the preexisting situation and the IAM would be free to strike and the company free to impose its own wage structure. Thus, under H.R. 1231 the recommendations of the Presidential board would not be binding. Imposing these recommendations on the parties would require additional legislation.

I

101st CONGRESS
1st Session

H. R. 1231

To direct the President to establish an emergency board to investigate and report respecting the dispute between Eastern Airlines and its collective bargaining units.

IN THE HOUSE OF REPRESENTATIVES

March 2, 1989

Mr. Anderson (for himself and Mr. Oberstar) introduced the following bill; which was referred to the Committee on Public Works and Transportation

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A BILL

To direct the President to establish an emergency board to investigate and report respecting the dispute between Eastern Airlines and its collective bargaining units.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in accordance with and subject to the provisions of section 10 of the Railway Labor Act (45 U.S.C. 160), the President shall create, not later than 1 day after the date of the enactment of this Act, a board to investigate and report to the President respecting the disputes between Eastern Airlines and the International Association of Machinists and

OVE

Aerospace Workers, the Air Line Pilots Association, and the Transport Workers Union of America.

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EASTERN AIRLINES LABOR DISPUTES EMERGENCY BOARD

TUESDAY, MARCH 7, 1989

House of Representatives,
Subcommittee on Aviation,
Committee on Public Works and Transportation,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:13 a.m., in room 2167, Rayburn House Office Building, Hon. James L. Oberstar (chairman of the subcommittee) presiding.

Mr. **Oberstar.** The Subcommittee on Aviation will come to order.

Today we meet to review the consequences of the Eastern Airlines labor/management dispute and the impact that event is having on the nation's competitive transportation system and the public interest. The subcommittee will consider legislation in the course of this hearing, and later today mark up a bill introduced by Chairman Anderson and myself to require the President to empanel a Presidential Emergency Board.

This hearing is most appropriate and timely, considering the events and the consequences facing us.

In a climate of deregulation, a healthy, competitive air transportation system is clearly a matter of broad public interest. Our concern is for the immediate impact of this strike on the traveling public and on transports of freight and commodities.

There is also a concern that substantial loss of jobs would have a national economic impact.

Beyond those concerns, the potential consequences of the loss of Eastern as a competitive airline in today's deregulated environment is a matter of real concern, because it could have profound consequences, particularly for air fares in the future.

There are no assurances that Eastern could survive an extended strike, nor are there assurances that any other carrier would be willing to move into the void that Eastern's demise would open up in a system which has increasingly been constricted by mergers and acquisitions in the last few years.

In that context, and in the broader context, the appointment of a Presidential Emergency Board is a matter of urgent public policy and something I believe ought to be implemented at the earliest possible opportunity, and so we operate today in an atmosphere of some urgency.

The Emergency Board would provide the framework for decisionmaking, and the vehicle for resolution of this dispute within the nominal 60-day period of time which we may want to inquire about in the course of this hearing—whether that period should be shortened, principally.

The process would result in a fair and an impartial resolution which parties could accept and might even welcome. In the alternative, if Congress so chose, and if there is no resolution among the parties, there is precedent for Congress legislating the findings of the Presidential Emergency Board as a resolution permanently to the strike.

The purpose of this hearing is not to fix blame, not to propose a solution, not to try to impose conditions on the parties, but to inquire into a framework within which the issue can be resolved.

There are many inter-related issues as a part of this hearing, and they will be the subject of further subcommittee hearings in the coming months—the atmosphere of deregulation and the many safety questions that will come up—but those are matters that we are going to consider in other context at later dates.

The focus today is on a discrete individual event, the labor/management dispute at Eastern Airlines. We hope that the legislation introduced and pending before the committee will provide a means for resolution of that dispute. I see the issue in its broadest, public interest context: the potential loss of a major airline, a major competitor in the nation's air travel system—one that is vital to deregulation. A threat to that system is an emergency. A threat to a carrier that represents 7.5 percent of the nation's air travel industry is a threat to the nation's air competition system. A loss of a $1 billion payroll is a very significant event. And the loss of a $3.5 billion economic competitor is a significant event.

We need to proceed in a very deliberate fashion to lay the facts out on the table and then move to the resolution and disposition of this legislation.

Mr. OBERSTAR. The Chair would call on the chairman of the full committee, Mr. Anderson, who is with us this morning and who has an urgent demand on time.

Mr. Anderson.

The CHAIRMAN. Thank you, Mr. Chairman.

Today we are considering H.R. 1231, a bill to direct the President to appoint an Emergency Board to mediate the Eastern Airlines labor/management dispute.

Last Thursday, as the National Mediation Board's 30-day cooling-off period drew to a close and a strike by Eastern's machinists loomed, I and subcommittee Chairman Oberstar introduced H.R. 1231. Frankly, I had hoped that the President would have appointed such a board prior to Saturday morning, but the President saw fit not to exercise his authority to intervene.

As a result, thousands of airline passengers have been unnecessarily inconvenienced, and the already precarious financial situation at Eastern has been made worse. I am afraid that the President's approach to the Eastern situation is the equivalent of standing by and simply watching as someone on a precipice contemplates suicide. I believe a helping hand and a "can we talk" approach would be best at this juncture, as opposed to just listening to the people below scream "jump."

I must note that the President's refusal to appoint an Emergency Board is unprecedented. On the numerous occasions in which the

National Mediation Board has recommended the appointment of an Emergency Board for an airline dispute, the President has routinely followed that recommendation.

This is the first time—I emphasize, the first time—that the President has not intervened in these circumstances.

Time is wasting, and with every passing day we seem to be getting closer to an outcome that no one needs or wants. I hope the President will recognize the public interest and the interest of the nation's transportation system and appoint a board without waiting for a piece of legislation to be sent to him.

But I can assure the President that I and others will be working to deliver a bill to him as soon as possible.

I thank the chairman for yielding.

Mr. OBERSTAR. Thank you, Mr. Chairman. We appreciate your participation and your guidance as we go through this legislative process.

The Chair recognizes the ranking Republican of the full committee, Mr. Hammerschmidt of Arkansas.

Mr. HAMMERSCHMIDT. Thank you very much, Mr. Chairman.

Mr. Chairman, we have all watched the deterioration of Eastern Airlines with sadness and dismay. The process, of course, has dragged on much too long. It has been accompanied by charges and countercharges that have undermined the public confidence in the safety of air transportation.

In my view, anything that Congress does should not contribute further to the destruction of Eastern. The survival of this airline as a strong, healthy carrier is in the public interest, it is in the interest of its passengers, it is in the interest of its employees, it is in the interest of continued competition in the airline industry.

Too many carriers have already disappeared as a result of bankruptcy or mergers. The airline industry is becoming concentrated in the hands of just a few carriers. The demise of Eastern Airlines would further contribute to that unhealthy concentration.

I know that many people say that Eastern is doomed no matter what happens now. They say it is already too late. I hope this is not true. But if Eastern dies it should be because of its own failures; it should not be destroyed by government interference. That is why I am concerned about the legislation, H.R. 1231, that is the subject of this hearing.

I fear this bill, by requiring a return to the status quo as it existed last week, will hasten the end of Eastern Airlines. Eastern is already losing $1 million a day. To convene an Emergency Board and return to the wages and working conditions of last week would only further bleed Eastern and endanger its survival. This dispute has dragged on too long already, as I have said.

Given the animosity between Eastern management and its union there is no reason to believe that the parties will be any closer to agreement two months from now than they are today. It is time for the government to let management and labor resolve the problem themselves. Indeed, an Emergency Board has not been appointed in the airline industry since 1966.

A determination was made in the late 1960s that a strike against a single air carrier would not meet the statutory requirement for the establishment of an Emergency Board: "Namely, that a strike"—and I quote from that determination—"threatens substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service."

If that determination was valid in the late 1960s, it is even more true today in today's deregulated airline industry. Airlines can now quickly redeploy their fleets to ensure that passengers receive needed air service.

The only factor that threatens a national transportation emergency in this case is the ability of labor to conduct secondary picketing. If a substantial interruption to commerce is achieved as a result of secondary picketing, the appropriate response would be for the Congress to ban secondary picketing in the airline and railroad industries. That would solve the problem of disruption to commerce while permitting the parties to return to this labor dispute to fight it out on their own turf.

It is important to emphasize that the right to conduct secondary picketing is unique to the airline and railroad industries, and even there it has been recognized only for the last couple of years.

Secondary picketing gives labor the power to turn a purely local dispute into a national crisis. In effect, it gives labor the power to blackmail the users of transportation services across the country—passengers, shipper, and consumers—to achieve their goals in a dispute with one employer.

So at this point I don't believe that the establishment of an Emergency Board will do anything to resolve this dispute, and I fear that such a delay will undermine Eastern's chances of survival.

I hope the witnesses today will help us understand these issues. I look forward to their testimony.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you, Mr. Hammerschmidt.

The Chair recognizes the gentleman from Georgia, the ranking member of this first meeting of the Aviation Subcommittee, Mr. Gingrich.

Mr. GINGRICH. Thank you, Mr. Chairman. And thank you for calling this meeting.

I want to also thank Secretary Skinner for coming today to testify.

I think that there are three big issues and three questions we have to deal with.

The first issue is: how do we ensure the maintenance of the national transportation system and when do we decide that there is an emergency in the national transportation system that justifies Federal intervention?

The second issue is: how do we maintain reasonable relations in the free enterprise system between labor unions and management, and what is the proper role of the Federal Government in intervening in legitimate labor/management arguments.

And the third issue is: how do we do all we can to help the families of Eastern Airlines—31,000 families of human beings, many of whom have committed years of their lives to working for a company which they have seen battered now by over a decade of union/management disagreement, and many of whom see their future and their dreams and their hopes going up in smoke as they watch a deadlock between the machinists and Frank Lorenzo? What is our obligation to those families?

That leads to three questions: is there a national emergency? What is the yardstick by which we should judge a national emergency? Is there an obligation for the Congress and the President to intervene?

Second, what is the legitimate role of secondary boycotts, a practice which is not tolerated by the country in other parts of union/management negotiations but has been a historic pattern for over 60 years in the transportation industry? Is it appropriate for commuters in New York or Chicago or Philadelphia to be threatened as part of a union/management struggle that is outside their immediate world? And, if so, what are the legitimate ground rules?

Finally, what is the obligation of the Government to protect workers and to protect commitments that are made to one company when that company is taken over by someone who pays far more to lawyers than he does to machinists, who pays far more to lobbyists than he does to pilots, and who is committed to rigging a structure by which cash flow is diverted? And what is the obligation of the country in dealing with people like Frank Lorenzo to ensure that average, decent workers have some kind of fairness and that there is a fair playing field?

If that shouldn't be dealt with by a mediation board, then how does the Government intend to intervene to ensure that the rights of individual workers and individual families aren't trampled on by random millionaires?

Thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you very much, Mr. Gingrich. That was a very thoughtful opening statement that frames the issues very neatly.

The Chair now would like to call on members who may have a statement, but cautioning and urging everyone to be very brief. I'm going to time you all for less than a minute. I will also caution witnesses today to be very brief and hold your statements to ten minutes. We are going to operate under the five-minute rule in the questioning process. Everyone will have an opportunity, and we want to make sure that every Member has an opportunity to ask questions, but we also want to make sure that every witness gets through the statement and that all the witnesses are heard in a timely fashion.

Remember, this is not a leisurely process we are operating under here. This is a national emergency, and we have to operate with that in mind.

The Chair recognizes the gentleman from the Virgin Islands.

Mr. DE LUGO. Thank you, Mr. Chairman. I will be very brief because I think we all know what the problems are here.

I want to thank you, Mr. Chairman, for holding this hearing on H.R. 1231, and for moving quickly to mark up this important legislation shortly after this hearing.

I want you to know that I support H.R. 1231, and I hope the bill will move expeditiously through the House and the Senate to be sent quickly to the President for his signature. I, for one, regret that the administration has not intervened in this matter sooner, because I believe this strike could have been averted.

Mr. OBERSTAR. The gentleman did admirably.

The gentleman from Minnesota, Mr. Stangeland.

Mr. STANGELAND. I have no statement at this time, Mr. Chairman.

Mr. OBERSTAR. The gentleman from New York, Mr. Molinari.

Mr. MOLINARI. Thank you, Mr. Chairman.

I must confess that I find myself very troubled by this matter, and torn between both sides in what direction I, myself, should go on this piece of legislation.

Seventeen months have expired while so-called collective bargaining has been going on. I don't know what is going to happen now that couldn't have happened during those 17 months. I don't expect any miracles to occur.

I share the sentiments expressed by the gentleman from Georgia, Mr. Gingrich, about Mr. Lorenzo and his credibility.

I would like to make just a couple of quick points. I think that it should be pointed out that this is not the same as the PATCO strike, as some people have led us to believe in some of the articles I have read. The PATCO strike was illegal. When they struck, they were illegal strikers. This is a legal strike, and the people out there are legally striking.

With respect to the secondary boycott, something that a lot of people have very strong feelings about, whether you like it or not, the fact is: that is the law of the land as it exists today. Until we change it, they have that right.

And, of course, there is another ingredient here that I think we have to consider, and that is the role of the Air Line Pilots Association. Traditionally they have not backed the unions in a lot of the actions we have seen in Congress over the last decade or so. This time they are backing this strike. I value their judgment very highly, and while I do not have a position I must say I am very troubled. I think for those of us on this subcommittee, the problem we are faced with is: are we better off letting it go its natural course, as some people say, or is the country better off if we do intervene?

Mr. OBERSTAR. The gentleman's time is expired.

Mr. MOLINARI. Frankly, I don't know my position at this point in time. By the end of the day I hope to have a position.

Mr. Chairman, I thank you very much for your indulgence.

Mr. OBERSTAR. The gentleman from Oregon?

Mr. DEFAZIO. Thank you, Mr. Chairman.

Mr. Chairman, what we have here is the failure to bargain in good faith. A quick buck artist is willfully dismantling a once proud airline, saddling it with debt, selling profitable portions to other subsidiaries of his empire, then demanding that experienced, highly competent employees should reduce their wages to finance his fiscal shenanigans.

The question is: will we let this renegade drag the industry down to his quick buck, to-hell-with-professionalism quality, and safety standards? Or will we stop him now before he destroys another airline and break another union?

Intervention by the President and a 60-day cooling off period will help move us toward preservation of Eastern and a competitive industry.

Mr. OBERSTAR. I thank the gentleman for his brevity.

The gentleman from Ohio?

Mr. McEWEN. Mr. Chairman, as a former employee of this once proud airline, let me say that many of us are fully aware as to how we got to the situation we are in today. I was proud to say that Eastern handled more passengers than any airline in the free world, and it has contributed much. Now some of the difficulties it is facing cannot be placed on the back of one man, and certainly not of the present owner, even though I am not here to defend anyone.

I am very much concerned that one of the airline's greatest traditions is being dismantled, true, but because of a series of hardheaded actions by a series of people that seem to have their own egos ahead of the future of their company or the future of the travelling public.

I am hopeful that this committee will see to do what is right, not only for air transportation, but ultimately for Eastern Airlines.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you, sir.

The gentleman from Texas.

Mr. LAUGHLIN. Mr. Chairman, I applaud the expeditious fashion in which both you and your staff have been able to organize this hearing on short notice.

Mr. OBERSTAR. The gentleman from California, Mr. Packard.

Mr. PACKARD. Mr. Chairman, I would hope that the members of the committee would forego opening statements. We didn't come here to listen to each other; we came to listen to witnesses. I would suggest that as quickly as we can, we get to the witnesses.

Mr. OBERSTAR. The gentleman from California, the former chairman of this subcommittee, Mr. Mineta.

Mr. MINETA. Mr. Chairman, let me commend you for your prompt action in moving to address our serious concerns about the current strike at Eastern Airlines.

Two of the important concerns in this dispute are the future of Eastern Airlines and its employees. The real focus we must keep in mind in discussing this issue must be Frank Lorenzo and his approach to running an airline.

This subcommittee's interest in and concern about the operation of Eastern Airlines is of longstanding. After Mr. Lorenzo acquired Eastern, the FAA found that the environment at the carrier was so acrimonious that it was limiting the company's ability to comply with safety regulations.

The apparently systematic dismemberment of Eastern by the sale of its most valuable assets calls into question Mr. Lorenzo's commitment to an ongoing Eastern Airlines.

During my tenure as Chair of this subcommittee, both this subcommittee and the full Committee on Public Works and Transportation were forced to call upon the Department of Transportation to determine the effect of Texas Air's management of Eastern Airlines, including the affect upon safety at the airline.

The intent of deregulation was not to create, nor even to encourage such a slash and burn management of our nation's air carriers.

Most recently, many members of the Public Works and Transportation Committee urged President Bush to accept the recommendation of the National Mediation Board to appoint a mediator to help resolve the strike. I believe such a mediator remains our most prudent course of action, and I'm glad this subcommittee, under your leadership, Mr. Chairman, is addressing this very timely proposal.

Thank you very much.

Mr. OBERSTAR. Thank you, Mr. Mineta.

The gentleman from Iowa.

Mr. LIGHTFOOT. Thank you, Mr. Chairman.

I'd like to thank Mr. Skinner for coming today.

I'm not a fan of Frank Lorenzo; at the same time, I feel that the union hasn't necessarily been prudent in some of the things they have done, as well. We have basically got a domestic quarrel going between a husband and a wife, and now we are asking the Government to be the referee. So in that sense I guess we have become the mother-in-law. The question is: whose mother-in-law are we going to be in settling this dispute?

Thank you, Mr. Chairman.

Mr. OBERSTAR. The gentleman from California, Mr. Bosco.

Mr. BOSCO. Thank you, Mr. Chairman.

I think we are all aware that we are not dealing here today with a national strike, but with a national symbol.

What happens when we have a fight to the death between one of our country's business titans and one of our country's labor titans? Both appear to be past the point of no return.

Can we bring them back from that point? I don't know, but I would point out that this legislation is not contemplated to be a continuation of the 17 months of controversy that have already existed. This legislation will cause this board to come up with a solution which can either be voluntarily accepted or can be imposed on these parties by the Congress.

In that sense, I think it could help the American flying public.

Mr. OBERSTAR. Thank you.

Are there other Members who wish to make opening statements?

Mr. LIPINSKI. Yes, sir.

Mr. OBERSTAR. The gentleman from Illinois.

Mr. LIPINSKI. I simply would like to take this opportunity to say I am anxious to hear from my fellow Chicagoan and good friend, Mr. Sam Skinner, in regards to this. So I hope everybody else passes so Sam can tell us what he has got to say.

Mr. OBERSTAR. The gentlewoman from New York.

Ms. SLAUGHTER. Mr. Chairman, I will submit my full statement for the record.

I just want to say, as one of the signers of the letter to the President urging creation of the board, I agree that we have no guarantee it will work, but it sure won't hurt.

Thank you.

[The prepared statement of Ms. Slaughter follows:]

STATEMENT OF HON. LOUISE M. SLAUGHTER

Mr. Chairman, I want to thank you and our eminent full committee chairman, Mr. Anderson, for holding this hearing and for scheduling a quick markup on H.R. 1231. While it's desirable to keep an open mind on the issues surrounding a labor dispute, I have already made one judgment—we need to pass H.R. 1231. I ask that the subcommittee staff please add my name now as a cosponsor of the bill.

Mr. Chairman, it's common sense that all avenues of possible resolution should be explored before a work stoppage takes place, and that's why we need H.R. 1231. When Congress enacted the Railway Labor Act, it specifically provided for an additional means of settling labor disputes short of a strike. The act calls for creation of an emergency board and a 60-day cooling-off period. I have yet to hear persuasive reasons why that congressional intent has been ignored.

Now we have real safety concerns about those Eastern aircraft that are flying. We are also facing interruptions of interstate commerce, and great inconvenience to the traveling public—all because of this administration's refusal to do what five different Presidents have done in over 30 airline disputes—create an emergency board of experts to frame possible solutions to the impasse. In over 75 percent of the disputes where emergency boards were appointed, the controversy was settled without a work stoppage.

The National Mediation Board has recommended that the President act. In every other case in the history of the Railway Labor Act where the Board has made this recommendation, Presidents have agreed to convene an emergency board.

Mr. Chairman, this President should have done the same. My hope is that he will see fit to do so very soon. For now, Congress should pass this legislation to help the President do what makes the most sense. Thank you.

Mr. **OBERSTAR**. Our first witness this morning is the Secretary of Transportation, who has had a number of commitments that he has foreshortened in order to extend his appearance here now to 11:30. We promised that he would get out of here by that time, and we hope that we can conduct the hearing in such a fashion that we can have the Secretary's statement.

Mr. Secretary, welcome to your first appearance before the House Committee on Public Works and Transportation and any of its subcommittees. We expect you'll be a regular visitor up here on a wide range of issues; regrettably, the first one is a rather contentious national issue, but one that you are fully capable of handling.

TESTIMONY OF HON. SAMUEL K. SKINNER, SECRETARY, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY ANTHONY BRODERICK, ASSOCIATE ADMINISTRATOR FOR REGULATION AND CERTIFICATION, FEDERAL AVIATION ADMINISTRATION

Mr. **SKINNER**. Thank you, Mr. Chairman.

First of all, let me also share with you that I feel this situation is unfortunate. There are a number of aspects to it, and I'd like to address a few of them briefly. I hope that my future appearances will be in a little different vein.

I appreciate the opportunity to appear before the committee to discuss the Eastern Airlines management/labor dispute. As you know, after 17 months of arduous bargaining, the parties are exercising their rights under the Railway Labor Act to pursue self-help in the attainment of their economic objectives.

We do not take sides in this dispute, nor do we believe it appropriate, in light of the history of the dispute and the precarious financial condition of a major commercial carrier in our deregulated aviation environment, to empanel a Presidential Emergency Board.

Having said that, I am well aware that some of my friends and distinguished members of this committee originally believed that the President should empanel a board and prolong the stand-off for another 60 days, and then perhaps impose a legislated settlement thereafter.

We respectfully differ with this approach, and believe that empaneling a Presidential Emergency Board is wholly inappropriate. This Administration believes in free market principles—we believe that collective bargaining process should take its normal course. We do not believe that government should be in the business of drafting the economic terms of labor agreements.

The plain fact of the matter is that a strike at Eastern, alone, does not substantially disrupt this nation's transportation system. It is only the specter of secondary activity that threatens to hold hostage this nation's economy and our global competitive positions.

If this specter is removed by voluntary acts of labor, or by Congress, certain and safe travel of perhaps millions of innocent passengers can be preserved. If widespread secondary picketing occurs, I am confident that the President will forward legislation and the Congress can act quickly and expeditiously to deal with this problem.

As one of the members indicated, secondary picketing is allowed under the law in this industry, and this industry, alone. It is not available to mine workers, steel workers, auto workers, garment workers, retail unions, electricians and carpenters, and masonry workers. It is an option; it is not mandatory.

We believe it is not necessary. We believe that millions and millions of Americans should not pay the price and should not be involved in the dispute between Eastern and its labor union in Miami, Florida. It is not fair.

We have urged the unions of this country to forego the option of secondary picketing and allow this dispute to run its normal course.

I would point out that this issue is not a new issue to Eastern and its union. They have been unable to reach agreement for over 17 months. The 30-day cooling off period was triggered, the parties began to attempt to settle this, and so far they have been unable to do so.

The President seriously considered all of his options. Considering all of the options, two fundamentals of his decision are clear: number one, disputes should be worked out by involved parties without recourse to the President or to Congress—Congress should not be in the business of telling workers in America what they are going to be paid; number two, America competes in a global economy. Manufacturing and service industries must remain competitive. Imposed settlement interferes with a competitive stance, prevents possible gains in productivity, and our efforts at economic, efficient service. The competitive position of airlines, and industry, as a whole, can be affected.

With one exception, there have been no Presidential Emergency Boards appointed in the airline industry since 1966. Today, although Eastern is not running, the other airlines in this country are accommodating Eastern passengers. Ability of other airlines to provide service means the history of previous Presidential Emergency Boards is no longer relevant in today's economic environment.

I suggest that this dispute should run its normal course. It is in the process of running its normal course. So far, thanks to the restraint of labor unions throughout this country, with the assistance and advice of courts throughout this country, secondary boycotting and picketing has not occurred. I applaud labor for the steps they have taken in this regard. The President and I encourage them to refrain from using this right and allow the process to go forward so the people at Eastern, stockholders of Eastern, employees of Eastern, and their labor unions can reach agreement as soon as possible and return this airline to being a viable carrier in our economy.

I would only comment, in closing, that the primary responsibility of the Department of Transportation and the Federal Aviation Administration obviously always includes, at the top of our list, safety. I have with me today Mr. Broderick, the associate administrator in charge of safety at the Federal Aviation Administration.

I can report to you that, as of this day, the Federal Aviation Administration has 2,030 inspectors on board and we have conducted over 2,000 field inspections. On Saturday, Sunday, and Monday, 521 inspectors performed 773 inspections on Eastern Airline equipment. The inspection process is going forward. We can assure the American people that the Federal Aviation Administration is on top of any safety issues that come up, and we will continue to do so for the remainder of this period.

With that, I would entertain any questions and ask that the rest of my remarks be incorporated into the record.

Mr. OBERSTAR. Your entire statement will be included in the record in full. Any supplementary material requested by Members will also be included in the record.

Thank you very much, Mr. Secretary.

I think there is a basic policy disagreement here between some of us and the Administration on the basic question of competition in the airline industry. I'd like to get to that question right off.

If Eastern Airlines should go into bankruptcy, be dissolved, either as a result of strike or some other purpose, what indications do you have that another carrier, other than those already serving the cities and the routes served now by Eastern, will move in and fill the competitive void that would be left by the demise of Eastern?

Mr. SKINNER. Mr. Chairman, first of all we hope and urge Mr. Lorenzo and Texas Air and his unions to get together and try to resolve this dispute and return Eastern to the air. I'm not——

Mr. OBERSTAR. We share that hope, but I think we are beyond that hope right now.

Mr. SKINNER. I don't share that opinion. I'm still hopeful, and the President is hopeful they can reach resolution.

Assuming they do not, in a hypothetical situation, there are several options available to the stockholders of Eastern Airlines. One option is the sale of the airline to another competitor or another airline who doesn't directly compete on those routes. A second option is the sale of a portion of those routes to other airlines that want to go in and service those markets. And a third option is a filing for bankruptcy or reorganization under which a new organization could be formed that could continue to serve that market.

Mr. **Oberstar**. In the first option, what prospects do you see of some other carrier not serving those markets moving in to fill that void?

Mr. **Skinner**. I think there are several carriers who have expressed interest in the past, who have indicated to me that they, in fact, do have some interest. I think they will explore those options in the normal course of business.

I have not spoken to Mr. Lorenzo since the strike began. I am not aware of what his plans are.

I do know that a number of companies in the industry have expressed interest in the past on working with Eastern on some kind of resolution.

Mr. **Oberstar**. This is a very difficult route to operate—the north/south route that is subject to cyclical pressures in the economy—and one that has been typically very difficulty to operate profitably for Eastern. Apart from its current labor/management problems, other carriers would probably see the very same problem that they have. The most profitable piece of this airline is now under negotiation to be sold off to Mr. Trump, the Eastern shuttle.

It seems to me that keeping the carrier you have got is better than hoping or betting that someone else will move into that void.

Mr. **Skinner**. And that is why, Mr. Chairman, I made the first part of my remarks. I am hopeful that will occur. That will only occur if the unions and management get together. The sooner that happens, the better off we will be. That process is now ongoing. It has been going on for 17 months without much success. I am still hopeful that will occur. I share your opinion there.

Mr. **Oberstar**. I wish it could. I'm somewhat pessimistic about the prospect of the parties being left alone. Perhaps in some other context it might work, but in this one it seems to me that in the transportation sector where, since 1926 when the Railway Labor Act was passed, there has been a demonstrated public interest in transportation issues because of the vital nature of transportation to our economy and to movement of people throughout our economy. And for that reason, Congresses over the years, and presidents of both parties, have left that legislation intact and recognized that there comes a point when some outside entity other than the collective bargaining process must come in and facilitate a resolution.

I believe this is the time, this is the point at which intervention is necessary. But I intend to explore with the other parties, as we proceed to their testimony, whether there is likelihood of reaching a solution under the aegis of a Presidential Emergency Board. I think that gives cover to both parties to reach an agreement to which they might otherwise not be able to come, and to which they have not been able to come in these past 16 months.

Mr. **Skinner**. Mr. Chairman, I would only say the problems between labor and management at Eastern Airlines we believe should be resolved between the parties. This airline will only function and compete in our environment if the employees and the airline are in agreement and in sync, and a mandatorily imposed contract on both parties, in our opinion, is not, in the deregulated environment, the way to go, and gives no assurance that the necessary relationship between labor and management exists to continue that relationship and to continue that airline.

I think you are absolutely right. I think this, to some degree, deals with a matter of philosophy as to whether the Federal Government should be in the business of imposing contracts on management and labor in this industry. And the railway industry and the transportation industry are the only areas, as you know, that this exists.

Mr. **Oberstar**. My time has expired, but I'm going to take the liberty of just asking Mr. Broderick a question about stepped up safety practices and surveillance.

You have had, for one year, 20 FAA inspectors on Eastern, and you have sent out advisories, which is customary practice when there is a labor/management dispute, to all the flight standard district offices. Are there going to be additional personnel assigned to the operating points of Eastern throughout its routes?

Mr. **Broderick**. Not full time, sir. They are calling on the normal district office network which, as you know, consists of about 83 offices. Those are the number of inspectors that are working that the Secretary mentioned a few minutes ago.

Mr. **Oberstar**. Thank you very much, Mr. Broderick.

The gentleman from Georgia, Mr. Gingrich.

Mr. **Gingrich**. Thank you very much for coming to testify today.

Let me start—because I think it is important—and clarify an issue that was raised with me, at least, yesterday, and give you a chance, Mr. Secretary, to explain what difference there is, if any, between the problems that were faced last year on the Chicago and Northwestern Railroad, where there was a specific request for Presidential intervention, and the current situation. I just think it would be helpful to get on the record what differences and similarities you see in those two cases.

Mr. **Skinner**. Thank you.

First of all, the situation in Chicago, for those that are not as familiar with it as some of you are, is that the Northwestern Railroad runs a freight operation in Chicago. In addition, they contract with a Federal agency, which was under the umbrella organization that I was chairman of, to provide commuter service. It is a purchase-of-service contract.

A dispute on the freight system within that Northwestern Railroad ended up in an impasse. Settlements were unable to be reached, and the union went on strike, also striking the commuter rail operation.

At that time I suggested that it was inappropriate for 50,000 innocent commuters to be tied up in a freight dispute and suggested that legislation should go forward dividing those two into separate units so that each could negotiate on their own without having an impact on innocent people.

The Congress decided to mandate a settlement in that case on a viable railroad with sufficient financial resources, and that was their solution to that problem.

I learned at that time the tremendous effect that secondary boycotting can have on innocent people. I also learned at that time that the time has come in this environment for us to take the changes in Taft-Hartley that occurred many years ago for the rest of industry and implement them in the Railway Labor Act. I believe the President shares my views.

This is not, however, the time to do that unless it is absolutely necessary.

Again, I applaud labor for the restraint they have shown in exercising this right. I hope they will continue to do that so the innocent people in Chicago, California, and New York do not pay the price.

Mr. GINGRICH. Could you comment for just a second on the rather unique situation we seem to be in, in that Eastern has three different unions in different stages of negotiation. As I understand it, even if we were to pass a traditional requirement for mediation, that would only apply to one of the three unions; therefore, we would, in fact, in order to accomplish the Eastern problem, be preempting the mediation process for both the airline pilots' union and for the Flight Attendants. Can you comment on how you see that playing out?

Mr. SKINNER. Well, we wouldn't be preempting it. What we would do is: if the 60-day period began for the machinists and the status quo remained, in the not-too-distant future, the pilots and the company would have to come to an agreement or the mediation board would declare an impasse. Then another 30-day period would begin, after which, if there was no resolution, we would be faced with the same position for the pilots' union that we now have for the machinists. In addition, there is a third union involved.

Until Eastern and all of its unions get together and reach agreement, this airline is not going to be a viable player in the American economy. You cannot run a business unless you have harmony with your unions or an agreement. I urge Mr. Lorenzo and his managers to go the extra mile to try to reach that harmony. It directly affects 30,000 people, and hundred of thousands of others are indirectly affected.

But the resolution must come, Congressman, with all three unions, not just one. The action you propose today, even if it were accepted by the President, would deal with only a portion of that problem.

Mr. GINGRICH. You should be aware, Mr. Secretary, that there is some talk of amending the action today to include the other two unions—in effect, to preemptively involve them in the same Presidential panel.

Mr. SKINNER. I had not heard yet. That, of course, would then say not only is Congress in the business of mandating a resolution when there is an impasse; we are now going to put steps in place to mandate a resolution before there is an impasse. That, in my opinion, would be an infringement on the employee rights significantly greater than has ever occurred in recent years and totally inappropriate in our deregulated environment.

Mr. GINGRICH. Let me summarize and put you on the spot for just a second. I'm——

Mr. SKINNER. I'm used to it.

Mr. GINGRICH. I'm delighted you are up here, and I think you are going to be a very effective Secretary and I look forward to working with you.

To be effective, it seems to me that Congress would have to include all three unions, yet, including all three unions, as you point out, would preempt the process even more than simply sending up the machinist union to the President.

In your judgment—and you may not be able to comment directly on this, but I want to set the stage because I think all of us have to think it through—is it likely that if the President were faced with a bill of that kind that he would veto it?

Mr. SKINNER. Well, I can't answer what the President would do, Congressman. I know that I believe my recommendation to him would be that he veto it.

Mr. GINGRICH. Thank you.

Mr. SKINNER. And I think I would argue in the strongest terms for that veto, especially given the fact that we now would be interrupting the normal labor negotiating process and putting ourselves and injecting ourselves into it before the parties had a chance to reach agreement and before that impasse. That is almost unprecedented, I believe, and totally inappropriate.

Mr. GINGRICH. Thank you.

Mr. OBERSTAR. Thank you, Mr. Gingrich.

The gentleman from the Virgin Islands, Mr. de Lugo.

Mr. DE LUGO. Mr. Chairman, I have no questions. I would just like to associate myself with your statements.

I would observe, though, that the Secretary did mention this deregulated environment that we find ourselves in, and I might say that the situation that we face today across this great country of ours leads many of us to have second thoughts about the whole question of deregulation.

Thank you, Mr. Chairman.

Mr. OBERSTAR. The gentleman from Oregon, Mr. DeFazio.

Mr. DEFAZIO. Mr. Secretary, I guess you just stated that you, personally, urge Mr. Lorenzo and the management to go the extra mile in meeting with the employees or attempting to meet the employees' demands. How would you reconcile that with your statement on Sunday night on "Meet the Press" where, when I heard you—in fact, I'm sorry to say I don't know you personally and didn't recognize you. I thought you were representing Eastern Airlines. [Laughter.]

So how would you reconcile your statement today with your statement then that the concessions were absolutely necessary for the continued viability of this airline? Do you see yourself as a neutral figure in this? An advocate? What do you see your role to be?

Mr. SKINNER. Actually, I welcome that question because it gives me an opportunity clear this up. Number one, I come to Washington from Chicago, where I believe my reputation as a fair person was established in over 20 years of part-time and full-time government service. I have represented labor and labor union members on a number of occasions, and I don't believe there is anything in my record that indicates I am pro-government or pro-company, anti-labor. So I welcome the opportunity to straighten that out.

Number two, I am not an economist, although I am an accountant. I have looked at numbers and our Department has looked at numbers. By any stretch of imagination, there is a significant profit and loss problem at Eastern Airlines. Both sides have to do something in this dispute. The numbers, whether you say a loss of $1 million a day or $1.5 million a day, anywhere from $365 to $500 million, that has to come from somewhere. So one of the areas that I assume has to be explored by both parties would be in the area of compensation and wages, because that makes up about 50 percent or so of the operating costs of the airline.

Obviously none of that would be necessary if the airline and its union could get together and compete effectively in the market, grab additional market share, and raise additional revenues. Whether or not that is possible at this particular time, given the 17 months of animosity that exist, it is going to be a while.

I meant to say that is an option. There are a number of other options. My preference, frankly, is to get this airline back and running and to get it in a position where it can gather a bigger share of the market and gather bigger revenues, and then the cuts wouldn't be necessary.

Mr. DEFAZIO. Are you familiar with this history of the airline? For instance, are you familiar with the selling off of the reservation system under very, very unusual terms where, in fact, they sold a profitable aspect of the airline for a cut-race price and then rented it back at a loss creating additional cost to the airline? Would you equally urge Mr. Lorenzo to undertake to undo some of these management decisions that have made it unprofitable? I don't see that we should go to the working people and ask them to give when what he has been doing is padding other parts of his empire.

Mr. SKINNER. Congressman, I try not to take sides on either side of this dispute. I think the problem is compounded here because of Mr. Lorenzo's actions and his conduct and the fact that he has no rapport with his workers. The fact that he comes in and tells me that his pilots will cross the line, as part of a courtesy visit, and they don't tell me he does not know what his employees are thinking. You cannot run a business, in my experience, unless your employees want to work for you and respect you. So I think he has to take significant steps to retain or maintain or restore his credibility with his employees. That has to take place as soon as possible.

If he doesn't do it, it doesn't bode well for him or his ownership of the company. I think that is as significant a factor as any of the other factors we have mentioned.

Unfortunately—or fortunately, I guess—the Government is not in the business of making the two parties get back together. That takes active, pro-active steps by each. I would think that Mr. Lorenzo would take some of the steps that he can think of that would restore his credibility, because until he does this will be an ongoing problem.

Mr. DEFAZIO. I think the key word is "restore," Mr. Secretary. Thank you.

Mr. OBERSTAR. The gentleman's time has expired.

The gentleman from Arkansas, Mr. Hammerschmidt.

Mr. HAMMERSCHMIDT. Thank you, Mr. Chairman.

Thank you, Mr. Secretary, for your statement.

Mr. Secretary, I would like to pursue just for a moment what Mr. Gingrich was talking about. ALPA and TWU are in mediation with Eastern. If this bill was passed, it would bypass the mediation and collective bargaining procedure, as I understand it. Is that the way you would interpret this bill?

Mr. **Skinner**. I'm sorry. Are you asking if this solves the problem?

Mr. **Hammerschmidt**. No.

Mr. **Skinner**. I'm sorry.

Mr. **Hammerschmidt**. My question is: the way the language is in the bill, it would actually have the pilots and the TWA flight attendants bypassing mediation and collective bargaining.

Mr. **Skinner**. From what I understand, the bill doesn't do that except that there are talks of an amendment that would do that, and then you would be bypassing the normal negotiating process.

Mr. **Hammerschmidt**. Let me read this section of the bill:

> The President shall create, not later than one day after the date of the enactment of this act, a board to investigate and report to the President respecting disputes between Eastern Airlines, the International Association of Machinists, Aerospace Workers, the Air Line Pilots Association, and the Transportation Workers Union of America.

It is in the bill.

To me, that would bypass mediation and collective bargaining procedure, which I thought got to the heart of your major objection and your suggestion that you would ask the President to veto any such legislation.

Mr. **Skinner**. You are absolutely correct. It does cover the Air Line Pilots Association, which is the pilots' union, and the transport workers. So it would.

The bill, as currently drafted, deals not only with the machinists, but deals with the other unions, some of whom are currently negotiating with the company, others of whom are at the final stages of negotiation but an impasse has not yet been declared. And, of course, it totally bypasses the statutorily created National Mediation Board.

Mr. **Hammerschmidt**. Thank you, Mr. Secretary.

Now, under the law a Presidential Emergency Board should be appointed only if the dispute "threatens substantially to interrupt interstate commerce." If it were not for the possibility of secondary boycotts, would there be any possible legal basis for appointing a Presidential Emergency Board?

Mr. **Skinner**. We believe not. We believe that the competitive situation within the industry is such that, even though Eastern's 1,100 flights would not fly, there are plenty of competitors that would fill the market and take over, and no basis whatsoever would exist for even a review.

Only the threat—I repeat, the threat—of secondary boycotting puts this into a decision process for the President. And under those terms, Congressman, every time there was a dispute, if a union wanted a national emergency board created all they'd have to do is threaten a secondary boycott. And then, under the terms proposed by some, an emergency board would be created and we would be totally bypassing normal collective bargaining process and we would be imposing, through Congress and the National Emergency Board, contracts on virtually all airline and railroad companies and employees in this country.

Mr. **Hammerschmidt**. As you know so well, in every other industry secondary boycotts are not permitted. So why, in the deregulated system, should the airline industry be treated any differently than those other industries?

Mr. SKINNER. I believe that it is an anomaly in the law. It was unexpected in the *Burlington Northern* decision. As Congressman Molinari points out, however, it is the law at this time. I, again, applaud—and I know the President appreciates—the restraint the unions have shown so far.

Mr. HAMMERSCHMIDT. Well, you say that if secondary boycotts occur you will send up legislation to ban such boycotts. Is that your position?

Mr. SKINNER. We believe that innocent Americans should not be penalized because of a dispute in Miami between a controversial owner and his labor union. Innocent rail commuter users in California, New York, and Chicago should not be penalized. Industry should not be penalized.

Why should freight traffic on railroads unrelated to the airline industry be interrupted, production workers possibly sent home from automobile factories where we are trying to compete in a global market, over an isolated dispute of longstanding in Miami, Florida?

We believe it is unusual to have this in law at all. It is only available in the airline and railroad industry. And if secondary picketing occurs, that is the appropriate remedy. We hope it will not be necessary to forward that legislation.

Mr. HAMMERSCHMIDT. Thank you very much, Mr. Secretary.

Mr. OBERSTAR. The gentleman's time has expired.

The Chair recognizes the gentleman from Texas, Mr. Laughlin.

Mr. LAUGHLIN. Thank you, Mr. Chairman. And thank you, Mr. Secretary.

Mr. Secretary, in your review of the Eastern numbers that you testified to earlier that you studied showing Eastern's unprofitable operation, did you reach any opinion as to the influence of the sale of Eastern's reservation system and its aircraft and gates and landing slots on the profitable operation of Eastern Airlines?

Mr. SKINNER. No. I basically looked at operations on a current basis rather than what has happened to the asset sales earlier. I assume you're talking about previous actions that have occurred and the impact they have had on the financial conditions of the company.

The Department of Transportation, before I came on board, did an extensive study of the financial condition. But what I was addressing is the fact that the airline, because of this dispute and because of their inability to come to agreement with their unions, has lost market share and has a significant cash operating loss that basically means it has to be funded on a regular basis. But we did not get into, nor do I render an opinion on the complexity or the appropriateness of the actions that Mr. Lorenzo has taken and the impact it has had on the financial asset and liability aspects of the Texas Air situation. We are talking about cash necessary to run the airline.

Mr. LAUGHLIN. What I'm trying to find out is if you found that in the sale of those assets the profitability of the airline improved. Did you study that?

Mr. **Skinner**. I didn't study that in any detail, to render an opinion.

Mr. **Laughlin**. Thank you, Mr. Secretary.

Mr. **Skinner**. Thank you.

Mr. **Oberstar**. The gentleman from Minnesota, Mr. Stangeland.

Mr. **Stangeland**. Thank you Mr. Chairman.

Mr. Secretary, welcome to the committee.

Let me ask you this: under the law, the Emergency Board would be appointed only if a dispute threatens substantially to interrupt interstate commerce. If it were not for the possibility of secondary boycotts, would there be any possible legal basis for the appointment of a PEB?

Mr. **Skinner**. No.

Mr. **Stangeland**. With the number of jobs and people involved, I think most of us consider the most important aspect of this is survival of the airline. If that is our primary goal, what is the best way to achieve that? Would it be the appointment of a board, or just letting the strike take its course?

Mr. **Skinner**. The President and I believe that this agreement and this company will only survive, as I have indicated earlier, if the union and its management get together, hopefully each giving a little bit in the normal collective bargaining process that we all know and have come to respect. And then everybody will at least reach peace or agreement and go forward.

If an agreement is mandated by Congress on a company or on employees, you don't have that feeling of cooperation or participation that would be necessary to make it, and it is totally inconsistent with the American collective bargaining process in most industries since, I might add, 1947.

Mr. **Stangeland**. If the Board were appointed, in your opinion what is the likelihood that this dispute would be resolved some time in the next 60 days? Or would we be right back where we are now?

Mr. **Skinner**. Well, in working at this for 17 months, which is an extended period of time much longer than most, I think they are further apart today, frankly, than they may have been earlier. One of the problems that we saw was that, as this period was building up, the frustration and animosity within the union and the company—but particularly within the union—the frustration was beginning to show itself across the board.

This has to come to closure. It doesn't help for a problem of this magnitude to fester for this extended period of time. And you can't mandate or expunge that attitude by an act of Congress. You do that by two parties coming together and saying "Let bygones be bygones," shaking hands, and saying "Let's get on and run the best airline we can." The best way for that to happen is the collective bargaining process that is going forth now.

Mr. **Stangeland**. In your estimation, how long will Eastern survive as an entity? How long a prolonged strike can Eastern withstand and still survive as an entity?

Mr. **Skinner**. There is all kind of speculation on that. It is clear that they have certain cash on hand. They have significant liabilities. They also, of course, have a stockholder in Texas Air. A lot of it will depend how much money Texas Air wants to put into this situation and how long.

Financial analysts have indicated that the drain right now is $7 million to $8 million a day. Obviously at that rate you are talking 30 to 45 days. But that is pure speculation. We are not in the business of managing that company nor managing its union. We are in the business of safety, watching their certificates, making sure that this airline stays competitive if they can and becomes a real competitor in the environment.

So the numbers I have seen go as much as 30 to 60 days. I have heard no one tell me or show me there is enough cash for this airline to survive a 3- or 4-month strike.

Mr. STANGELAND. The pilots have threatened, as I understand, to engage in some sort of a slow down in other airlines because they claim the pilots that are flying Eastern aircraft are not as safe. And I understand that Eastern Airlines is not flying at all except for the shuttle. Are you aware, or is there any obvious attempt by pilots of other airlines to slow the process down at the current time? Or is that just a threat of the other airlines.

Mr. SKINNER. Number one, I am aware. Number two, let me give you some numbers. It is my understanding—and I have spoken with Mr. Duffy. I believe he is in the room today. The President and I have urged the Air Line Pilots Association to forego a slow down based upon activity by other airlines and other pilots. I don't think the American people who fly other airlines should be affected by the activity at Eastern, just as the commuters shouldn't.

Mr. Duffy indicated to me, as he has indicated publicly, that they were concerned about the number of flights that Eastern would be flying and who they would be flying them with and the affect that might have on safety.

Now, as of today these numbers apply, and I had these prepared for me overnight. Eastern Airlines non-strike schedule for March 6, 1989 domestic and foreign, would have been 1,057 flights. That would have been on March 6. They operated 62 flights, including 21 shuttles.

Other airlines have added the following because of the strike: Pan Am, 20 flights; Delta, 5 flights; American, United, TWA, USAir, and Piedmont did not operate any extra flights, nor do they expect to because they don't have the equipment or crews.

So, therefore, the net change in the system as the result of Eastern's activities is: we have 1,057 flights less, add to it the 62 flights including the shuttle, plus the 25 and we have 970 less flights in the system. That means that we have approximately 26,154 total operations. On March 6 we had 21,000, or a net change of 4,300 less. So we have less flights in the system than we have had in some time because of the Eastern shutdown.

Mr. OBERSTAR. The gentleman's time has expired.

The gentleman from California, Mr. Mineta.

Mr. MINETA. Thank you very much, Mr. Chairman.

Mr. Secretary, you expressed great concern about the effect of the strike on travelers. What about the effect on travelers if the strike becomes a long, drawn-out affair? And what about the safety perspective, as well as what about the possibility of this being the end of Eastern Airlines?

Mr. **Skinner**. That is a pretty broad question, Congressman. Let me see if I can——

Mr. **Mineta**. Let's start with the first part, then. What about the effect on travelers?

Mr. **Skinner**. Well, the effect on travelers directly by the strike at Eastern is really not nearly as great as one might think.

The majority of markets impacted by the Eastern strike have competitive, non-stop service, and all of the routes have substitute either direct or connecting flights.

So the bottom line is: in the deregulated environment, there are competitors ready to fill the void and take care of the passengers that are now flying on Eastern. So we do not see any significant, long-term competitive impact on travelers.

That doesn't deal with the problem of having one less competitor in the environment. As you know, Congressman, shortly after becoming Secretary I empowered a Special Task Force on Competition to look at all aspects of competition. I am very concerned about the shrinking number of competitors in this deregulated airline environment, and I am doing everything I can to find some solutions or proposal and steps that I can take to ensure we have as competitive an environment as possible.

In the meantime, however, the passengers that normally would fly Eastern can be served by other airlines.

Mr. **Mineta**. Is the maintenance work that is now being done on those flights that are flying being done by Eastern Airlines employees, or is that being contracted out? Are you satisfied with the number of inspectors that are doing the work?

Mr. **Skinner**. Let me say that I'm going to ask Mr. Broderick to comment directly. But we have over 2,000 inspectors available. We have made over 700 inspections in the last 3 days. As soon as I leave here, I'm going up to New York to meet with our inspection team up in New York to, first of all, compliment them on the job they have been doing, and, number two, to make sure that they understand how important this issue is, although I think they do.

Mr. Broderick might want to comment on that directly.

Mr. **Broderick**. As of today, they have been using maintenance performed by management and supervisory personnel at Eastern Airlines. They have put in place contract arrangements and other arrangements to perform necessary long-term maintenance, but that, of course, won't come into play for a very long time at the current rate. They have got substitute maintenance provisions that have been approved by the FAA, and we are quite satisfied with the services that they would provide.

Mr. **Mineta**. Are the earlier discussions about the use of Ogdon Allied or Orion still in the works?

Mr. **Skinner**. Orion is not. Ogdon Allied may be supplying some ramp service people under contract at various locations. I wouldn't consider those the same as maintenance people though, sir.

Mr. **Mineta**. Mr. Secretary, in your statement last week explaining why you did not support appointment of mediator, you said, "It is time for this dispute to come to an end." I'm not quite clear how not appointing a mediator will bring this dispute to an end unless the dispute ends by the demise of one of the participants. I'm wondering if you have some information or if you feel that this strike will come to an end in less than 60 days that the mediator would bring forward?

Mr. **Skinner**. Congressman, the National Mediation Board has been trying to get these parties together for 17 months unsuccessfully. There is no indication that a 60-day cooling off period will do anything but continue that. In fact, as I indicated to you earlier, I think the relationship is getting worse during this period of no decision.

You can assume two things in your question. Number one, you can assume that if there is an impasse and there is a strike that the company will go under. Or you can assume that the company and the union will both move closer towards a settlement.

I usually try to start from the positive and hope that the union and the company will come forward and together both move a little bit and reach agreement. I'm still optimistic—not overly optimistic. But I clearly know that won't happen unless the period of time of impasse ends and the whole normal collective bargaining process takes its course. That is, in almost all industries except this, a strike and a test of union strength versus management resolve and who is ready to move and when. That is going on now. I am still hopeful that the machinists and—I might add, however, Congressman, that we still have to deal with the pilots and the other people that are involved. So there are three disputes. This is one that is now going through that.

Mr. **Oberstar**. The gentleman's time has expired.

The gentleman from New York, Mr. Molinari.

Mr. **Molinari**. Thank you, Mr. Chairman.

Mr. Skinner, I want to compliment you on your candor. I think that one of your statements earlier really crystallizes what we are going through here. We are trying to separate fact from fiction.

Mr. Lorenzo and his executives very cleverly conveyed the message that the pilots would cross the picket line, and therefore the strike would not affect the public. We know now that was a fiction. The fact is that pilots are not crossing the picket lines.

You pointed out that that raises a very serious question of credibility on the part of Mr. Lorenzo, and I feel that same way.

A fiction that I believe is a fiction is that a strike would not cause a major transportation disruption and that other carriers would be able to pick up the slack. That would be so if we don't have the imposition of a secondary boycott. Since that is the law of the land, if the injunction is lifted—and I think it will be—we can expect the union to use whatever tools are available to them, including a secondary boycott. I think we all agree that would result in a serious disruption.

I think it is a fiction to say that the matter should be left to collective bargaining and that eventually a settlement would be negotiated. I see no way that is going to happen.

Let me turn to the questions which I am supposed to ask. If the temporary restraining orders are lifted—and I assume that we will know that in the very near future—would you not agree that a secondary boycott, if imposed, would substantially disrupt our nation's transportation system?

Mr. **Skinner**. Yes, and that is why I hope the unions will not do that. I don't think it is in the best interest of the labor unions in this country to impose those kinds of conditions on innocent, uninvolved parties.

Mr. **Molinari**. I understand.

Mr. **Skinner**. And the President and I have asked them to restrain, and so far they have. And so I am not as pessimistic, Congressman, as I might be on the issue of whether they will. This dispute is running its normal course.

I think when the labor unions talked about secondary boycotts and secondary picketing they thought, also, that Mr. Lorenzo would be able to fly the airline. He didn't fly the airline. The pilots honored the machinists' picket line, and I think that changes the dynamics. And I might add it also changes the dynamics for the ALPA safety slow down because the airline isn't flying, and I would hope that the airline pilots would take the same attitude that the unions have and not inconvenience millions of Americans.

If I took 30 seconds of his time, Mr. Chairman, I hope you will let me have 30 seconds. I apologize. That was a little longer than I had anticipated.

Mr. **Molinari**. I appreciate that.

I disagree with you, incidentally. I think that the only reason that the machinists have not gone into a secondary boycott is that they are observing the injunction order and they are complying with the law as it exists today. But I believe that if they lift that you are going to see a secondary boycott immediately.

But if they do have a secondary boycott, there would only be two areas of substantive relief available absent any agreement that might be reached between labor and management, and I don't see that as a viable possibility at this point. One would be an act of Congress outlawing secondary boycotts, which I view as very doubtful. Second, the only other alternative that I see would by the President intervening.

Now, if Congress fails to enact such legislation, would you recommend to the President that he empanel an Emergency Board?

Mr. **Skinner**. First of all, our program is to continue to ask labor not to use secondary activity. If they do, we will be required to move that legislation and ask for support. I believe that there is significant support for that generally. I am hopeful it won't be necessary to move it. Those are the options. The Emergency Board is not an option.

Mr. **Molinari**. You would not recommend it?

Mr. **Skinner**. No, I would not.

Mr. **Molinari**. Suppose you felt that Eastern Airlines was heading into bankruptcy, and that the only course of action to save it from going into bankruptcy was an Emergency Board? Would you still maintain the same position?

Mr. **Skinner**. First of all, that hypothetical you propose, I don't see how an Emergency Board saves a company from bankruptcy. I have done a little bankruptcy work over the years in private practice, and bankruptcy is caused by a lack of financial condition.

Unless Congress is willing, at the same time they mandate a board, to subsidize Eastern Airlines significantly, I would assume that once bankruptcy occurred, if it is an option and it does occur, the courts would basically take over anyway. Then we would get not only the executive and legislative branches involved, but we would now have the third branch of government involved, the judicial branch, in the bankruptcy court. As you know, bankruptcy judges have tremendous power in reorganization that, frankly, might make all of this moot.

Mr. **Molinari**. So you think maybe bankruptcy might be a preferable course of action?

Mr. **Skinner**. No. Absolutely not. All I'm saying is that if that occurred it is not going to occur because of an act of Congress or an act of the President; it is going to occur because they don't have financial vitality. That's why I think there is tremendous pressure on the airline to settle with the machinists, and I hope they will.

Mr. **Oberstar**. The gentleman's time has expired.

The gentleman from California, Mr. Bosco.

Mr. Bosco. Thank you, Mr. Chairman.

Mr. Secretary, you have reiterated your desire that this strike come to an end, and you have said that the only circumstances under which it would be appropriate to appoint a board would be if it substantially interfered with interstate commerce. Yet you continue to hold on to the belief or the optimism that somehow there won't be secondary boycotts.

Secondary boycotts are legal, the unions have indicated they are going to secondarily boycott, they are in the process now of lifting restraining orders—which most people believe they will be able to lift—and yet you hold on to your optimism.

If the secondary boycotts come about and the country's transportation network is stopped, will you simply pursue a remedy in Congress to have secondary boycotts eliminated—which I think has about the same chance as our pay raise did—or will you ask that a board be empaneled? Or will you do both? You could do both.

Mr. **Skinner**. We will move immediately with legislation if it occurs. Let me say that the reason I share optimism is because I believe the unions in this country want to do the responsible thing. They want to be heard. I don't believe——

Mr. Bosco. Mr. Secretary——

Mr. **Skinner**. Just a minute, if I might answer.

I don't believe that unions start out with the desire to hurt the American people unfairly, and that is the reason I am optimistic. If they are achieving their goals, they won't have to resort to secondary boycotting. I have more confidence in the labor unions, I think, than some people do, and I am optimistic so far. So they may get the right, and, for a lot of reasons, they may have that order lifted. That doesn't mean they will exercise it, because I think they recognize the hardships it will impose on many Americans.

Mr. Bosco. Mr. Secretary, we are facing a national transportation emergency. I have asked you a specific question. In the event there is a secondary boycott, would you recommend that a board be empaneled, that the legislation be introduced, or both?

Mr. **Skinner**. We would recommend, as we have indicated, the legislation asking that the secondary boycotting power, Congressman, that that exists for this industry and this industry, alone, that law be changed, and that this industry would be put on a parity with most other industries.

Mr. Bosco. And that would be the Administration's sole response to this crisis?

Mr. SKINNER. At this time that is what we believe to be the proper response. Yes, sir.

Mr. Bosco. Mr. Secretary, are you a spectator in this drama right now? Or have you actually called the parties, brought them into your office, personally implored them to resolve this? Or is the Administration, including the President, taking kinds of a hands-off, laissez-faire, philosophical approach to it?

Mr. SKINNER. Let me say under the law, Congressman, I believe the National Mediation Board, under law, has tried to get them together, and I think they are continuing to do so up until the time of the strike. I applaud their efforts in doing so.

Number two, I have publicly asked in my appearances, as I have done here today, that both parties get together. Whether or not it is appropriate for the Secretary of Transportation to assume the responsibilities of the National Mediation Board, I have serious reservations on that.

Mr. Bosco. Well, the Board recommended to you that you empanel an Emergency Board, which you didn't do. But there hasn't been any rolling up of the sleeves and getting in there and saying, "Look, let's get this thing solved before it becomes a national crisis."? There hasn't been any of that?

Mr. SKINNER. I think a lot of people have done that. They have been doing that for an extended period of time. I think the Mediation Board continues to try to bring that resolution. And, under law, they are the appropriate party to do it.

But if there is any indication that my role as Secretary of Transportation could help do that, I will do that. I have been working on this problem from dawn to dark for ten days now, and I am not afraid to go anywhere, any place, and put anybody in a room if this can solve it.

Mr. Bosco. I think a lot of us would have great confidence in you doing that.

Thank you, Mr. Chairman.

Mr. OBERSTAR. I thank the gentleman.

The Chair will recognize, at this point, the chairman of the full committee, Mr. Anderson.

Mr. ANDERSON. Thank you, Mr. Chairman and Mr. Secretary.

Mr. Secretary, you say it is not proper for the government to intervene in this dispute. But the government, including your predecessor, Mr. Burnley, this committee, the National Mediation Board, and the courts, has been directly involved for over a year now in this dispute. We are now considering, as a further step, an Emergency Board which binds no one, which is not open ended, and which has a definite end point. Now, why not make this one last effort? And what has the President—and, more importantly, the travelling public—got to lose by convening an Emergency Board?

Mr. SKINNER. Congressman, this situation has gone on for 17 months. In many of these situations in history where these boards have been empaneled—and almost exclusively that has been done in the railroad industry, not the airline industry—there has been a light at the end of the tunnel and there has been an indication that movement could occur. And there has been no such indication here. And, in fact, another 60 days, given the sentiments of the parties involved, was of great concern to us because you can't run an airline where you have the kind of animosity over an extended period of time building up.

So with no light at the end of the tunnel, with the need to keep a competitor in business—not because we are particularly favoring that competitor. We favor anybody that will create competition in the industry. It is healthy for the industry and healthy for the consumer—it was the President's belief, combined with his belief that the normal collective bargaining process is where these decisions belong, not the Congress and the Executive Branch, that led to this decision.

Mr. ANDERSON. In other words, if we could see a light at the end of the tunnel you would agree with us, but right now you don't see a light at the end of the tunnel?

Mr. SKINNER. That would clearly be a factor that the President did and would consider. There has been no indication of a light at the end of the tunnel. When you combine it with everything else, the decision was made, and I believe appropriately.

Mr. ANDERSON. Thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you very much, Mr. Chairman. We appreciate your participation in the hearing considering the magnitude of its importance.

I must say with respect to lights at ends of tunnels and all this discussion of secondary boycott that secondary boycott is not the focus of this hearing. There is not one in place now. We are discussing the incident at hand, the strike at Eastern. The only light so far is in this room. I hope we can get it focused on the subject at hand.

The gentleman from Ohio, Mr. McEwen.

Mr. MCEWEN. Thank you, Mr. Chairman.

Thank you, Mr. Secretary, for your presentation this morning. It has been very, very helpful.

I repeat from my opening remarks, there are some of us that have a deep affection for Eastern going back many, many years. And we have been to this place now a series of time. You cannot look at the present situation without looking at 1983 and 1984 and 1986. In fact, I can't help but recall the statement by Charlie Bryant when he said, when Eastern was faced with a bankruptcy once before:

> It might be surprising the relationship that could develop between Lorenzo and our organization. For all his faults, Lorenzo is a businessman who has demonstrated he knows how to make money, how to run a successful company. I can work with Frank Lorenzo.

And so when we have gone through the history of the previous management that was dedicated to the survival of Eastern, and now we have reached this point for perhaps the final time, I saw the statement that you made earlier in one of your first questions—and I know how that can be clipped—in which it says "I'm hopeful that the owner will make the necessary accommodations with the union." Perhaps you could help me out.

Just a point: Eastern is losing $1 million a day. How can they presently solve that situation? How can they give further? Should they give to lose $1.2 million or $1.5 million or perhaps $2 million a day in order to make this a viable airline?

Mr. SKINNER. Well, if I were to answer that question that would suppose that I am deeply involved in the negotiations between Eastern and its unions, and I am not. I just know that in most disputes you don't solve them by one party going all the way and the other party going none of the way. I have seen very few disputes get solved that way. I have mediated a few disputes and have never found one to go that way.

So I think that both parties have to go a ways. I suppose if we wanted to we could think of a number of suggestions—innovative things that Mr. Lorenzo could do to make his employees feel a part of a company that is going to go forward in the future. The steps he has taken don't seem to have done that. They have created the exact opposite impression. I think it is a mindset and a movement and a feeling. Apparently from your remarks, Mr. Bryan at one time thought he could work something out and would work something out. Perhaps Mr. Lorenzo will bring to the table the same kind of attitude he must have brought to Mr. Bryan at one time when Mr. Bryant was willing to say that.

Mr. MCEWEN. Thank you. And I would just point out he was saying these things about Mr. Lorenzo regarding the management they had then. Having affected the demise of the management of Eastern there, he then pursued Mr. Lorenzo as a suitor. I repeat, those of us that care about Eastern are fearful that this might be the end of the road.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you, Mr. McEwen.

The gentleman from North Carolina, Mr. Valentine?

Mr. VALENTINE. Mr. Chairman, I would like to briefly ask Mr. Skinner a question or two.

First of all, I would like to ask you, sir, if you will define what is meant by the expression when used by other airline pilots that they will "fly by the book."

Mr. SKINNER. Yes, sir. What that means is that for instance, if you are a pilot and you call for a clearance from Chicago to Los Angeles, there are many way points along the way that you will pass through, and when you filed your flight plan you filed your flight plan through approximately 12 to 14 way points across the country.

You can ask for, under the rules, a readback when you call clearance delivery for a full clearance, and they will say, "Through X, through Y, through Badger, through Denver, all the way through." That takes an extended period of time.

Normally that is done by responding, "N1, you are cleared, as filed." They confirm, in short, abbreviated form, that as you filed your flight plan, that has been approved. The readback, if they ask for it, takes a considerable amount of what we call "channel time" to read back the entire thing. That's one.

Number 2, in visual conditions you have an option, as the pilot in charge, to clear off your IFR flight plan and, instead of flying to the threshold on the full ILS approach you can take a visual to the threshhold. That will allow spacing at a condensed level, but that is the pilot in charge's decision, and if he wants to fly to the threshhold he can do so. All of that means delays in getting clearances to pilots and to airplanes. All of that means, if I report in clear VFR conditions where there is no ceiling problem and no visibility problem, you can then move airplanes and space them closer into the airport.

Those two things would cause delays. They would be "by the book", because the responsibility for that generally vests with the pilot in charge.

Mr. **VALENTINE**. And by other pilots on other airlines saying they are going to fly by the book it implies some slow down in the process of moving passengers around this country, doesn't it?

Mr. **SKINNER**. Yes, sir. And the Air Line Pilots Association has said that activity is required because of the additional traffic that would be in the air as the result of Eastern. I think they made that decision—which we might agree or disagree with. The point is: the premise upon which that decision was made is no longer valid because Eastern is not flying 1,000 flights a day; they flew 60 yesterday. So the traffic in the system is down, not up. It may be that, given that, those requirements may no longer have to be adhered to.

Mr. **VALENTINE**. When you refer to 17 months, 17 months ago was the time that the owner of this corporation became Mr. Lorenzo; isn't that right? The labor problems go back many months before that time, don't they?

Mr. **SKINNER**. I believe the labor problems go back for years with previous owners. The 17 months has been the period that they have been negotiating for a contract, and for a good portion of that they have been at what we call "impasse." The National Mediation Board, 30 days ago, declared impasse.

Mr. **VALENTINE**. And the board that this legislation seeks to create would not be authorized to give any kind of binding direction to either labor or management, would it?

Mr. **SKINNER**. No. What they would do is empanel a board, they would study the problem, meet with both sides, and make recommendations. I would only point out that traditionally and historically, almost without exception, if the parties are unable to reach agreement, the Congress has mandated and the President has signed a mandated settlement on those employees and on those companies.

In some of the situations they reach agreement. In many of them Congress, after that, imposes, if there is no settlement, a mandated settlement.

Mr. **VALENTINE**. But the effect of it, at least on the fact of it, if this legislation is passed, would be to require the airline to continue to operate for at least two more months, require the pilots and others to go back to work with really, based on history, little expectation that there would be any different result at the end of that period; isn't that true?

Mr. **SKINNER**. Yes, sir.

Mr. **VALENTINE**. Thank you.

Mr. **OBERSTAR**. The gentleman's time has expired.

The Chair observes that the Secretary does have a time constraint. But, Mr. Secretary, there are a number of Members who have questions of the witness, and for many of them this is their first hearing. The Chair will take a prerogative of shortening the time to three minutes.

The gentleman from California, Mr. Packard.

Mr. **Packard**. Thank you, Mr. Chairman.

I am going to miss those extra two minutes. I have four questions I wanted to ask, so if I get through them I'd like short answers.

Number one, how effective would a secondary picketing process be in shutting down the air service of America?

Mr. **Skinner**. A real comprehensive secondary picketing activity would shut down some airlines, because some of the airlines have "no strike" clauses which appear to have been, at least to this time, enforced.

Mr. **Packard**. But not all——

Mr. **Skinner**. But it clearly would shut down commuter and freight traffic all over the country. It would be very effective.

Mr. **Packard**. Second question: apparently this morning the pilots' association did call for a slow down, from what my staff has told me. What kind of disruption do you expect that to cause?

Mr. **Skinner**. Well, if that were to occur we anticipate significant delays in the system all over the country. It would be very significant.

Mr. **Packard**. To passengers, and to whom else?

Mr. **Skinner**. It would be to passengers. Primarily the inconvenience would be to the millions of people that fly the airlines every day whose flights would be delayed while our controllers handle the full clearance delivery problem and, number two, space out traffic in flow control to give the full margin for full IFR approaches down to the threshhold.

Mr. **Packard**. If this bill were passed in its current form—and I think that Mr. Hammerschmidt clarified that rather significantly this morning—would that create greater or lesser pressure on the parties to settle than the current strike scenario?

Mr. **Skinner**. I think it would create less pressure. It would put off the problem for a period of time, if not indefinitely. It would also, I might add, create significant legal problems because we would be taking away from pilots and cabin attendants and any other union that is in the negotiating process their right to——

Mr. **Packard**. It is your belief that the strike environment creates the most pressure for parties to come together and settle it?

Mr. **Skinner**. Yes, sir, it is.

Mr. **Packard**. Last question: if this bill is passed in its form where the Air Line Pilots Association and the Transport Workers Union would also be included in this legislation, and thus bypass the collective bargaining process, at least for those two unions, would that establish a precedent that could eliminate existing statutory collective bargaining for railroads and airlines and replace it with congressionally mandated agreements in the future?

Mr. **Skinner**. Well, it certainly would be, I think, an unprecedented precedent, and I don't think it would bode well for free and open competitive bargaining between industry and its unions.

Mr. **Oberstar**. The gentleman's time is expired.

The Chair recognizes the gentleman from Illinois, Mr. Lipinski.

Mr. **Lipinski**. I'll pass.

Mr. **Oberstar**. The gentleman from Georgia, Mr. Lewis.

Mr. **Lewis**. No questions.

Mr. **Oberstar**. The gentlewoman from New York, Ms. Slaughter.

We're moving through this very fast.

Ms. **Slaughter**. Mr. Secretary, I'm glad you are still here. I'm going to speak as quickly as I can. I really want to get through this.

Mr. Lorenzo has said that he believed the pilots would cross the picket lines and fly and that there would be very little interruption here. Did he say that directly to you?

Mr. **Skinner**. Yes, he said it directly to me. I have met with every major airline head in the country, with one exception, since I have become Secretary. It was in one of those meetings that he did tell me that.

Ms. **Slaughter**. Did you believe him?

Mr. **Skinner**. I thought he believed it. I didn't know. I was getting another side of it that said it wouldn't occur. I don't think, in that situation, you really know until it happens.

Ms. **Slaughter**. Did it affect your decision to recommend to the President to not set up the Emergency Board?

Mr. **Skinner**. It was not a significant factor whether Eastern would fly or not, because Eastern's passengers could be accommodated by other competitors in the industry.

Ms. **Slaughter**. This is a very strange-looking strike to me because, as I understand it, Mr. Lorenzo had an agreement with Continental Airlines to supply some 500 pilots to fly in case of a strike. What happened to that?

Mr. **Skinner**. I believe the union filed litigation challenging that, and he backed away from that agreement. I think that is correct.

Ms. **Slaughter**. And so even though those were non-union pilots, he was able to keep them from crossing the picket line?

Mr. **Skinner**. That was something they were talking about a year ago. I have not seen that on the drawing board recently, and I don't believe that was an option in recent times. I think that was about a year ago. He had that as an option, and I think the pilots' union was successful in getting a court order prohibiting him from doing that.

Ms. **Slaughter**. What really surprises me about this—and what a more cynical person than I might think, is that Mr. Lorenzo was trying to bankrupt this airline. It makes me remember what he did with Continental. He bankrupted it and was able to recreate in his own image. Do you see any advantage in anything he is doing to Eastern to create that same kind of situation?

Mr. **Skinner**. Well, I have no idea what his overall strategy and plan is. I do know there are a lot of other people who are stockholders or have loaned this business money, and I would think, with the debt he has got on his books, his lenders have something to say about how he is going to run this airline, and I have a feeling they are saying a little bit more today than they were a few days ago—several billion dollars, and it is not all inter-group debt. There is some real money there by some real people who are at risk.

So I have a feeling, and my experience tell me, that his lenders are participating with him right now on his strategy.

Ms. **Slaughter**. You're saying that he owes more than the Texas Air book business that he's done back and forth?

Mr. **Skinner**. Yes. He's got real loans on the books.

Ms. SLAUGHTER. If you have some sense that what he is trying to do is not what he told you that he would keep going, some sense that he is perhaps not as sincere as to trying to keep Eastern alive, would that make any difference in your feeling about the Emergency Board?

Mr. OBERSTAR. The time——

Mr. SKINNER. Well, I'm going to take the gavel on that one. That calls for so much speculation that I really would need to reflect on that. I apologize. I really want to try to answer, and I have delayed my departure to answer everybody's questions——

Ms. SLAUGHTER. I appreciate that.

Mr. SKINNER [continuing]. But I really hate to speculate on that.

Ms. SLAUGHTER. I appreciate that, because I couldn't have asked anybody else what I have just asked you! Thank you.

Mr. OBERSTAR. The gentlewoman's time has expired.

The gentleman from Pennsylvania, Mr. Shuster.

Mr. SHUSTER. Thank you very much, Mr. Chairman.

Mr. Secretary, first I want to compliment you on the way you have taken charge of this situation. I think you are taking a measured response to it, and yet an intense involvement of yourself, personally. I think that is to be commended.

It is my understanding, Mr. Secretary, that since 1966 there has been no Emergency Board empaneled by a President for an airline strike, with a single exception of a situation in Alaska, even though there have been five major airline strikes—all five of them with carriers larger than Eastern.

I understand further that the reason in these five major strikes in the past 20 years that there was no Emergency Board empaneled is because it is the finding that a strike by one carrier does not jeopardize the nation's transportation system. Do you agree with that? And, if not, why not?

Mr. SKINNER. Well, I think that it is—my numbers indicated that since 1978, since deregulation, we have had five separate strikes, one lasting 25 days and one lasting 3 months. They have all ended up in resolution. All of the airlines indicated are still flying. None of those were mandated settlements. So the track record on strikes, when they are taken, is that within a period of anywhere from 25 days to 3 months the disputes are resolved in the normal collective bargaining process.

So I think track record and history and precedent shows us these strikes can be resolved pretty quickly in the free enterprise, deregulated environment.

Mr. SHUSTER. Is there anything fundamentally different about this strike from those strikes which would cause us to arrive at a different conclusion?

Mr. SKINNER. No. I think the only distinction I would make is that the intensity level between both parties is greater here, although I was in Chicago when the United strike took place, and I will tell you the intensity level between the company and the pilots was pretty significant. I personally know a number of United pilots and went through that whole thing with them—advising them, I might add, on their side rather than on the company side. That was pretty intense, too, and they resolved that in 31 days.

Mr. **Shuster**. Is there any reason to believe that this strike will more likely jeopardize the entire national transportation system than those other five strikes?

Mr. **Skinner**. No, sir. There is not.

Mr. **Shuster**. Thank you very much.

Thank you, Mr. Chairman.

Mr. **Oberstar**. The gentleman's time is expired.

The gentleman from Colorado, Mr. Skaggs.

Mr. **Skaggs**. Thank you, Mr. Chairman.

Mr. Secretary, I appreciate you being here this morning.

Let me say that I was one of the co-signers on the letter to the President urging that he take action to appoint a board, and I believe that would have been the wiser course.

The bill before us, however, presents a somewhat more peculiar circumstance in which, as I understand it, we would be ordering the President to do something that he has discretion to do under existing law. Is that your understanding?

Mr. **Skinner**. Yes, that is my understanding.

Mr. **Skaggs**. And you have indicated that, as his chief advisor in this area, you would recommend that he respectfully decline that order by vetoing the bill?

Mr. **Skinner**. I would say I am one of his chief advisors; I wouldn't say I am his chief advisor.

Mr. **Skaggs**. Now, there has been some speculation that, in fact, the Administration would, notwithstanding what you have said, welcome this kind of action by Congress because it would provide some cover for the appointment of a board that would otherwise fly in the face of stated policy. Would you comment on that?

Mr. **Skinner**. There has been some indication of that, you say?

Mr. **Skaggs**. Some speculation about that.

Mr. **Skinner**. I have never seen any indication. I thought you said some indication, and I'd like to know who indicated it, because they haven't indicated it to me.

I think that if that had been indicated to anybody, I should know if I am one of those "chief advisors." But I haven't heard that at all, sir.

Mr. **Skaggs**. And you would discount the usefulness of that kind of speculation?

Mr. **Skinner**. Yes, sir. I think it would be counterproductive. I think the President considered this very thoroughly. He is totally on top of this situation. We talk daily about it. I met with him late Sunday night. I have seen no indication that there is any thought along those lines.

Mr. **Skaggs**. Thank you, Mr. Chairman.

Mr. **Oberstar**. Thank you.

The gentleman from New York, Mr. Boehlert.

Mr. **Boehlert**. Thank you, Mr. Chairman.

Mr. Secretary, could you give me an estimate on the volume and dollar amount of the outstanding Eastern tickets right now?

Mr. **Skinner**. I cannot. I will just comment on this, Congressman: yesterday I spoke to the heads of every major airline with the exception of Mr. Lorenzo—the CEOs of virtually all of them—asking them to do everything they can to accommodate Eastern passengers. I received a unanimous expression of support for my request from each and every one of them. We are monitoring that very carefully.

We want to make sure that the Eastern passenger is taken care of by the rest of the industry to the best of their ability and, frankly, I was encouraged. But at no time did I get an estimate of their outstanding tickets.

As Secretary of Transportation, I am trying to make sure they are taken care of.

Mr. **Boehlert**. I have had figures provided me that indicates the outstanding liability of the passengers is in the magnitude of about $200 million for each of the major airlines. Would you suggest that is a fair figure?

Mr. **Skinner**. It really would be very dangerous for me to even comment on that.

Mr. **Boehlert**. You've mentioned—and that's comforting—that you have talked with the other airlines and they are stepping in. Are then honoring discounted tickets, also?

Mr. **Skinner**. Well, I've asked each of the airlines to provide me what their policy is. Some are requiring validation; some aren't. It looks like some are using different procedures. Some of them are allowing them to be used on a regular basis, some on standby. I should be in my office tonight when I return a list from some of the airlines as to what they are doing.

What I told them yesterday is "Let's not stand on formality. If you have got empty space on your airplane, let's take care of that Eastern passenger as best you can."

Mr. **Boehlert**. And you are saying that, to the best of your understanding, they are doing it universally?

Mr. **Skinner**. They all said they are going to do the best they can.

Mr. **Boehlert**. That leaves a lot of room.

Mr. **Skinner**. I tried to leave the impression—because that's what I meant to say—that I expect them to go the extra mile. What that means to each of them is a little different, but I'm going to be monitoring it, and if I have to make another call asking them to go the extra mile again I will do so. My primary concern is that the Eastern passenger who is ticketed gets taken care of consistent with the system. So we are just continuing to quietly request it.

But I want to make it clear that they are all being very cooperative. What that cooperation turns out to be I don't know yet.

Mr. **Boehlert**. If you take the cynical attitude regarding Mr. Lorenzo's intentions—and that's not too hard to do. His fan club is not very large. I think you can appreciate that. If you take that attitude that perhaps he is going the same route intentionally with Eastern that he went with Continental and Eastern ends up going belly up, what happens to the ticket holder? What happens to all of the Americans across the country that have a couple hundred million dollars worth of outstanding tickets? They paid up front. It is the only example I know of where you pay for service before you get it. What happens to them?

Mr. **Skinner**. They become a creditor in the normal credit process. What eventually happens to them in that dire situation would depend upon the value of the assets at Eastern Airlines and what would happen to the airline in a reorganization mode.

Mr. **Boehlert**. So the typical——

Mr. **Skinner**. And they do have a claim——

Mr. **Oberstar**. The gentleman's time has expired.

The gentleman from Tennessee, Mr. Clement.

Mr. **Clement**. Thank you, Mr. Chairman, I'll ask my questions quickly.

Mr. Secretary, as I understand from your testimony, you look at this dispute as a regional dispute and not a national emergency; is that correct?

Mr. **Skinner**. We believe the dispute between Eastern and its machinists is a dispute at one airline that services the north/south corridor and South America, with some flights east and west. Yes.

When you say regional, Eastern is not a regional carrier. It is an international carrier. The dispute happens to be headquartered in Miami because the company and its union are headquartered in Miami. But it is a national airline with a national dispute, the impact of which we believe the rest of the industry can assume.

Mr. **Clement**. But you don't look at it as a national emergency, and that is why you are not supporting this proposed legislation?

Mr. **Skinner**. It is not. That strike is not a national emergency. Yes, sir, that is correct.

Mr. **Clement**. Every employee I have talked to with Eastern always mentions Mr. Lorenzo's name. They never mention management, it is always Mr. Lorenzo. Do you feel that Mr. Lorenzo has he totally lost any credibility that he might have had with the rank and file employees, whether they be union or not?

Mr. **Skinner**. It certainly isn't good. I have never seen one manager who has been so vilified by his employees and unions as this individual has been. So he has very—the divide between the two is about continental in quality right now.

Mr. **Clement**. Is there anything that Mr. Lorenzo could say or do to remedy the situation to get them back to the table to decide this dispute?

Mr. **Skinner**. Anything is possible, but that means he would have to sit down with the machinists and with the other unions and with his employees and come up with some real positive steps that would convince them he has their concerns in mind.

Mr. **Clement**. Does Mr. Lorenzo speak totally for management?

Mr. **Skinner**. Eastern has got a president, and I saw him on television this weekend. They have had a lot of spokespersons. I haven't seen Mr. Lorenzo commenting. So it looks to me like the people that speak for Eastern are the people down there who—Mr. Bakes and others. But he certainly is CEO of the parent. He is a major player.

Mr. **Clement**. I'll just ask you one more time—I know the others have—and this will be my last question. On this legislation, you cannot foresee the President intervening no matter what circumstance?

Mr. **Skinner**. The current situation we believe is going forward in the normal collective bargaining process. We are encouraging everybody to try to reach agreement on it. We are hopeful that they will do so. And there is nothing that we have seen that would cause the President to change his mind.

Mr. **Oberstar**. The gentleman's time has expired.

The gentleman from Iowa, Mr. Lightfoot.

Mr. LIGHTFOOT. Thank you, Mr. Chairman.

I'll make it quick, since you are already late.

One of the things we keep hearing going back and forth is the opinion of whether we have an emergency situation or not. How many air carriers do we have nationwide?

Mr. SKINNER. Well, we have about six major and a number of what I call "regional carriers." We have got a list of them right here: American, Continental, Delta, Eastern, Northwest, PanAm, Piedmont, TWA, United, USAir, Air Wisconsin, Alaska, Aloha, America West, Braniff, Hawaiian, Midway, and Southwest.

Mr. LIGHTFOOT. I'm not an attorney, but if I understand this correctly the operative language is "threaten substantially to interrupt interstate commerce under the law" before the Presidential Advisory Board would go into play?

Mr. SKINNER. That's correct.

Mr. LIGHTFOOT. That's the operative language. So one out of all those carriers just listed being on strike is not a national emergency. If the secondary picketing begins, could that create a national emergency?

Mr. SKINNER. I believe that emergency can be remedied by legislation that we have talked about earlier.

Mr. LIGHTFOOT. And if the secondary picketing would begin, how long would it take you to get over here with the legislation, providing that you had an escort?

Mr. SKINNER. We'd get it over here pretty quick, sir.

Mr. LIGHTFOOT. Thank you, Mr. Chairman.

Mr. SKINNER. Mr. Chairman, I know these people have waited, but I have a whole schedule that is already back an hour. I would be more than glad to communicate with them directly by phone, take inquiries by record. With that in mind, knowing I have just broken my rule, if somebody has an urgent question that they really want to get on the record I will take it now.

I really apologize. I don't like to do this at all, but I backed this whole schedule out for this hearing.

Mr. OBERSTAR. I understand that, and I understand the pressures that you have had were already consuming time, and you did agree to extend the time for appearance here, and we appreciate that. This is your first major public appearance.

Please allow me the opportunity to just ask the remainder of the Members on both sides if whey have any questions for you, very briefly, before you leave to fulfill your other responsibilities.

Mr. OBERSTAR. The gentleman from Illinois.

Mr. CASTELLO. Respecting the Secretary's time constraints and the fact that I'm going to meet with him later this week, I will save my questions for then. Thank you.

Mr. OBERSTAR. The gentleman from Tennessee.

Mr. DUNCAN. Mr. Secretary, very briefly, is there any middle ground that you and the administration can take here? Obviously it is an important thing to you. The President met with you on Sunday night.

Are you willing to ask Mr. Lorenzo and the head of the machinists to come to your office and meet with you so that even if that doesn't work at least the American people would know that you had tried everything possible to settle this dispute?

Mr. SKINNER. I have thought about that proper role. Over the years I have been somewhat successful in mediating disputes like this. I have been very careful, though, not to involve myself in this dispute where there is a National Mediation Board that has that responsibility. I've been reflecting, believe it or not, every day as to what extra effort I should make to solve this.

Mr. DUNCAN. Something short of this legislation.

Mr. SKINNER. I'll do anything I can, and I am constantly thinking about possible options and I try to be as creative as I can.

Mr. OBERSTAR. The gentleman from Georgia, Mr. Jones?

Mr. JONES. Yes. Mr. Secretary, thank you for your testimony. I know you are in a hurry, but I just have to ask because, not surprisingly, I am slightly confused here.

It seems to me you have said that the reason that you oppose an Emergency Board, and have last week after that request, was that there is no light at the end of the tunnel, that this has reached a loggerheads, an impasse that can't be resolved. Isn't that an awfully good argument for forming an Emergency Board?

Mr. SKINNER. Well, you opt for the Emergency Board where you hope that significant progress will be made in the ongoing 60 days.

This dispute has been going on for 17 months. It is an excessively long period of time with no movement, and the parties are getting further apart. So I think something—the next step in the collective bargaining process has to take place, and it has.

Mr. JONES. That is the strike and the resultant loss or potential loss of tens of thousands of jobs, potential bankruptcy of a major airline which has been a traditional cornerstone in our transportation industry.

Mr. SKINNER. Nobody feels worse about that than I do. These conditions have been going on for an extended period of time, and employees and everybody have a right to have this collective bargaining process go forward. I'm not happy about it at all. I wish I was here on a more positive note.

Mr. JONES. Yet the only solution, the only remedy that is being put forth is the potential introduction of legislation which would remove a right which has not been exercised?

Mr. SKINNER. It would not only remove a right, it hasn't been exercised and that is why the legislation has not been introduced. I'm hopeful we won't have to introduce it.

Mr. JONES. Thank you, sir.

Mr. OBERSTAR. Mr. Secretary, you have been most patient and thorough in your response, you have been straightforward about the administration's policies. We appreciate your participation here, and we look forward to seeing more of you in future months.

Mr. SKINNER. Thank you, Mr. Chairman.

If any of you have any questions that you didn't get answered, my staff will be more than glad to answer them.

I apologize for having to leave, but, as I have explained, I have got another meeting and other things scheduled for today that all deal, I might add, with Eastern.

[The prepared statement of Mr. Skinner follows:]

STATEMENT OF SECRETARY SAMUEL K. SKINNER,
DEPARTMENT OF TRANSPORTATION,
before the
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
SUBCOMMITTEE ON AVIATION,
CONCERNING LEGISLATION ADDRESSING THE EASTERN AIRLINES LABOR DISPUTE,
March 7, 1989

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE TO DISCUSS THE EASTERN AIRLINES MANAGEMENT/LABOR DISPUTE. AS YOU KNOW, AFTER 17 MONTHS OF ARDUOUS BARGAINING, THE PARTIES ARE EXERCISING THEIR RIGHTS UNDER THE RAILWAY LABOR ACT TO PURSUE SELF-HELP IN THE ATTAINMENT OF THEIR ECONOMIC OBJECTIVES. WE DO NOT TAKE SIDES IN THIS DISPUTE, NOR DO WE BELIEVE IT APPROPRIATE, IN LIGHT OF THE HISTORY OF THE DISPUTE AND THE PRECARIOUS FINANCIAL CONDITION OF A MAJOR COMMERCIAL CARRIER IN OUR DEREGULATED AVIATION ENVIRONMENT, TO EMPANEL A PRESIDENTIAL EMERGENCY BOARD.

HAVING SAID THAT, I AM WELL AWARE THAT SOME OF MY FRIENDS AND DISTINGUISHED MEMBERS OF THIS COMMITTEE ORIGINALLY BELIEVED THAT THE PRESIDENT SHOULD EMPANEL A BOARD AND PROLONG THE STANDOFF FOR ANOTHER 60 DAYS, PERHAPS IMPOSING A LEGISLATED SETTLEMENT THEREAFTER.

WE RESPECTFULLY DIFFER WITH THIS APPROACH, AND BELIEVE THAT EMPANELING A PRESIDENTIAL EMERGENCY BOARD IS WHOLLY INAPPROPRIATE. THIS ADMINISTRATION BELIEVES IN FREE MARKET PRINCIPLES -- WE SHOULD ALLOW THE COLLECTIVE BARGAINING PROCESS TO TAKE ITS NORMAL COURSE. WE DO NOT BELIEVE THAT GOVERNMENT SHOULD BE IN THE BUSINESS OF DRAFTING THE ECONOMIC TERMS OF LABOR AGREEMENTS. THE PLAIN FACT OF THE MATTER IS THAT A STRIKE AT EASTERN ALONE DOES NOT SUBTANTIALLY DISRUPT THIS NATION'S TRANSPORTATION SYSTEM. IT IS ONLY THE SPECTER OF SECONDARY ACTIVITY THAT THREATENS TO HOLD HOSTAGE THIS NATION'S ECONOMY AND OUR GLOBAL COMPETITIVE POSITION. IF THIS SPECTER IS REMOVED BY CONGRESS, SAFE AND CERTAIN TRAVEL OF PERHAPS MILLIONS OF INNOCENT PASSENGERS CAN BE PRESERVED. IF WIDESPREAD SECONDARY ACTION OCCURS, I AM CONFIDENT THAT THE CONGRESS CAN ACT QUICKLY AND EXPEDITIOUSLY, JUST AS SPEEDLY AS IT ACHIEVED A SOLUTION FOR CHICAGO'S MASS TRANSIT RIDERS ON THE C&NW LAST FALL WHEN I HEADED THE REGIONAL TRANSPORTATION AUTHORITY OF NORTHEASTERN ILLINOIS.

BEFORE GOING ANY FURTHER, I WANT TO EMPHASIZE THAT OUR FIRST AND FOREMOST GOAL AT THE DEPARTMENT IS TO ASSURE THAT THE SAFETY OF THE AIR TRANSPORTATION SYSTEM, AT EASTERN AND AT ANY OTHER POINT IN THE SYSTEM AFFECTED BY THE EASTERN SITUATION, IS NOT COMPROMISED IN ANY RESPECT. HEIGHTENED FAA SURVEILLANCE AND STAFFING PROCEDURES ARE IN PLACE TO ASSURE THAT SAFETY IS NOT AFFECTED BY THE STRIKE. WE ARE AWARE OF INTENTIONS BY SOME TO "FLY BY THE BOOK", AND WE WILL DEAL WITH THAT BY CONTINUING TO PUT

SAFETY FIRST AND EFFICIENCY NEXT. THE AIR TRAVELER WANTS TO GET TO THE DESTINATION ON TIME, OF COURSE, BUT WANTS ABOVE ALL TO GET THERE SAFELY. WE AGREE.

I NEED NOT DWELL ON THE FACTS OF THE STRIKE THAT PRECIPITATED THIS HEARING. ESSENTIALLY, EASTERN AIRLINES AND ONE OF ITS MAJOR UNIONS WERE UNABLE TO REACH A SATISFACTORY RESOLUTION OF WIDELY DIVERGENT GOALS, AND THE NATIONAL MEDIATION BOARD DECLARED AN IMPASSE IN THE NEGOTIATIONS BETWEEN THE MACHINISTS UNION AND EASTERN AT THE BEGINNING OF FEBRUARY. UNDER THE PROCESSES OF THE RAILWAY LABOR ACT, A 30-DAY "COOLING OFF" PERIOD WAS TRIGGERED, AT THE END OF WHICH THE PARTIES WERE ENTITLED TO EXERCISE SELF-HELP. EASTERN INDICATED THAT IT INTENDED TO IMPOSE NEW WAGES AND WORK RULES, AND THE MACHINISTS AVAILED THEMSELVES OF THEIR RIGHT TO SELF HELP AT MIDNIGHT FRIDAY NIGHT, WALKING OUT AND POSTING PICKETS, WHICH WERE HONORED BY NEARLY ALL OF THE PILOTS AND FLIGHT ATTENDANTS AT EASTERN. MOST EASTERN SERVICE WAS SHUT DOWN AS A RESULT.

THE PRESIDENT HAS ASSESSED THIS SITUATION AS IT HAS DEVELOPED, MOST PARTICULARLY BECAUSE THE RAILWAY LABOR ACT PERMITS HIS INTERVENTION IN A CASE WHEN A SECTION OF THE COUNTRY IS THREATENED WITH LOSS OF "ESSENTIAL TRANSPORTATION SERVICE". THE PRESIDENT'S DECISION TO APPOINT AN EMERGENCY BOARD TO MAKE RECOMMENDATIONS FOR A SETTLEMENT IS DISCRETIONARY. LAST FRIDAY AFTERNOON, THE PRESIDENT CONCLUDED THAT THE FACTS OF THIS LABOR DISPUTE DO NOT JUSTIFY THE APPOINTMENT OF A PRESIDENTIAL EMERGENCY BOARD.

TWO FUNDAMENTALS UNDERLIE THE PRESIDENT'S DECISION. MOST IMPORTANT, THIS ADMINISTRATION BELIEVES THAT LABOR/MANAGEMENT DISPUTES CAN BE AND SHOULD BE WORKED OUT BY THE INVOLVED PARTIES, WITHOUT RECOURSE TO THE PRESIDENT OR CONGRESS. THE RAILWAY LABOR ACT PRESERVES THE RIGHTS OF THE PARTIES TO EXERCISE SELF HELP IF BARGAINING AND THE MEDIATION EFFORTS OF THE NATIONAL MEDIATION BOARD ARE UNSUCCESSFUL. EASTERN AND THE MACHINISTS UNION HAVE REACHED THIS POINT, AND THE FEDERAL GOVERNMENT SHOULD NOT IMPOSE A COMPROMISE ON THEM. THE NATION'S ECONOMIC VITALITY IS A REFLECTION OF THE FACT THAT SOLUTIONS REACHED BY PRIVATE ENTITIES MOST OFTEN ARE BETTER THAN THOSE IMPOSED BY GOVERNMENT.

THIS REACHES THE SECOND FUNDAMENTAL POINT. THE UNITED STATES IS PART OF A GLOBAL ECONOMY, AND OUR MANUFACTURING AND SERVICE INDUSTRIES MUST REMAIN AS COMPETITIVE AS POSSIBLE TO MAINTAIN OUR PLACE IN THE WORLD. THE ECONOMIC DEREGULATION OF TRANSPORTATION HAS REAPED UNTOLD BENEFITS IN MAKING OUR TRANSPORTATION SYSTEM COMPETITIVE. OUR COMPETITIVE STANCE SHOULD NOT BE INTERFERED WITH. DECISIONS BASED ON MARKET FACTORS, NOT GOVERNMENT FIAT, WILL BEST PRESERVE OUR COMPETITIVE ABILITIES.

SINCE AIRLINE DEREGULATION IN 1978, THE SITUATION OF DOMESTIC AIRLINES HAS CHANGED DRAMATICALLY. BECAUSE THERE ARE NO BARS TO

SERVING DOMESTIC ROUTES, A REDUCTION OR CESSATION OF EASTERN SERVICE TO A PARTICULAR POINT WILL NOT MEAN AN END TO SERVICE. AS WAS THE CASE WITH FIVE SIGNIFICANT STRIKES AGAINST AIR CARRIERS SINCE 1978, OTHER CARRIERS FILL IN QUICKLY TO PROVIDE NEEDED PASSENGER AND CARGO SERVICE, AND WE HAVE ALREADY SEEN THAT HAPPENING IN THIS CASE AS DELTA, PAN AM, AND OTHER CARRIERS ARE MOVING TO ACCOMMODATE PASSENGERS UNABLE TO FLY EASTERN.

THIS ABILITY OF OTHER AIRLINES TO PROVIDE SUPPLEMENTARY SERVICE WHERE NEEDED MEANS THAT THE HISTORY OF PREVIOUS PRESIDENTIAL EMERGENCY BOARDS IS NO LONGER RELEVANT IN TODAY'S ECONOMIC ENVIRONMENT. IN THE LAST 20 YEARS, ONLY ONE EMERGENCY BOARD HAS BEEN APPOINTED IN THE AIRLINE BUSINESS, AND THAT WAS PURSUANT TO SECTION 44 OF THE AIRLINE DEREGULATION ACT. IT INVOLVED THE WEIN-AIR ALASKA DISPUTE IN WHICH THE CONGRESS ORDERED THE EMERGENCY BOARD DESPITE THE FACT THAT THE MEDIATION BOARD HAD NOT RECOMMENDED ONE. INTERVENTION IN THAT CASE, WHICH WAS BASED ON THE PARTICULAR FACTS OF THE DISPUTE, SHOULD NOT SERVE AS A PRECEDENT FOR INTERFERING IN THE EASTERN CONTROVERSY MORE THAN A DECADE LATER.

IN ANALYZING THE SITUATION BEFORE US, ANOTHER NEW FACTOR EXISTS BY VIRTUE OF THE 1987 BURLINGTON NORTHERN SUPREME COURT DECISION. FOR THE FIRST TIME SINCE THE INCEPTION OF THE RAILWAY LABOR ACT IN 1926, IT WAS RULED THAT A PARTY IS NOT BARRED BY THE ACT FROM CONDUCTING "SECONDARY ACTIVITY" AGAINST OTHER COMPANIES. THIS IS AN ANOMALY IN THE OVERALL CONTEXT OF U.S. LABOR LAW AND AT

VARIANCE WITH THE LAW GOVERNING MOST OTHER INDUSTRIES (SECTION 8(B)(4) OF THE NATIONAL LABOR RELATIONS ACT). SECONDARY PICKETING IN THE BUILDING TRADES AND TRUCKING INDUSTRIES WAS BARRED BY THE TAFT-HARTLEY ACT IN 1947, AND HAS NOT BEEN AVAILABLE IN ANY SECTOR OF THE ECONOMY SINCE THAT TIME, EXCEPTING THE SUPREME COURT RULING IN 1987 FOR AIR AND RAIL TRANSPORTATION. IN MY VIEW, THAT DECISION HAS UPSET THE BALANCE OF FORCES ANTICIPATED TO BE AVAILABLE UNDER U.S. LABOR LAW, AND SECONDARY ACTIVITY IS FUNDAMENTALLY UNFAIR TO TRULY "NEUTRAL" PARTIES, FOR INSTANCE, COMMUTERS IN CHICAGO AND NEW YORK, THAT CAN BE AFFECTED BY IT.

AT THIS POINT, SECONDARY ACTIVITY HAS BEEN THREATENED BUT HAS NOT OCCURRED, DUE TO THE TEMPORARY RESTRAINING ORDERS ENTERED DURING THE PAST WEEK ADDRESSING COMMUTER RAIL SERVICES AND OTHER AIRLINES. THE REASONING UNDERLYING THE DECISIONS IS BEING FURTHER TESTED AND WE MUST AWAIT THE OUTCOME. HOWEVER, THE PRESIDENT HAS INDICATED THE CORRECT APPROACH TO DEALING WITH SECONDARY ACTIVITY AGAINST TRULY NEUTRAL PARTIES WOULD BE TO AMEND THE RAILWAY LABOR ACT SO THAT IT DOES NOT PERMIT SUCH ACTIVITY. THEN, NEUTRAL PARTIES WOULD UNAMBIGUOUSLY BE ABLE TO SEEK PROPER INJUNCTIVE RELIEF. I SEE NO REASON WHY RAILROAD COMMUTERS IN NEW YORK OR CHICAGO, OR AIR TRAVELERS IN SAN FRANCISCO OR MINNEAPOLIS, SHOULD BE DEPRIVED OF SERVICE BECAUSE OF A DISPUTE BETWEEN EASTERN AND ITS MACHINISTS IN MIAMI. THE ADMINISTRATION IS PREPARED TO TRANSMIT CORRECTIVE LEGISLATION SHOULD CIRCUMSTANCES REQUIRE.

WITH REGARD TO THE LEGISLATION BEFORE THE COMMITTEE TODAY, MY CONSIDERED VIEW IS THAT SUCH AN APPROACH WOULD NOT SERVE THE INTERESTS OF THE PARTIES OR THE PUBLIC. THE FAA IS VIGOROUSLY UPHOLDING ITS RESPONSIBILITIES FOR ASSURING THE SAFETY OF THE SYSTEM. WE BELIEVE THAT THE PUBLIC WILL GENERALLY FIND ALTERNATE TRANSPORTATION ON OTHER AIRLINES WHICH SERVE ALL OF EASTERN'S MAJOR POINTS. WE ARE PREPARED TO DEAL WITH ANY "FLY BY THE BOOK" ACTIONS BY ASSURING SYSTEM SAFETY AND BY MINIMIZING DELAYS WHERE FEASIBLE.

THE APPOINTMENT OF A BOARD UNDER THESE CIRCUMSTANCES WOULD MERELY DELAY, FOR UP TO 60 DAYS, THE SELF-HELP PROCESS WHICH IS ALREADY UNDERWAY AND BEING DEALT WITH SAFELY. IT IS FAR SUPERIOR TO ALLOW THE ECONOMIC REALITIES OF THE DISPUTE TO DICTATE THE OUTCOME.

THIS COMPLETES MY STATEMENT. I WOULD BE PLEASED TO RESPOND TO QUESTIONS FROM THE COMMITTEE.

Mr. **Oberstar**. I understand all of the matters that you have before you, and we very much appreciate it.

The Chair will announce that those members that were shortchanged in the questioning process will be the first to ask questions in the next round of questioning.

The Chair now recognizes and calls up the next panel, consisting of: Mr. Lane Kirkland, President of the American Federation of Labor/Congress of Industrial Organizations; Mr. John F. Peterpaul, General Vice President, IAM; Captain Henry Duffy, President of the Air Line Pilots Association; Mr. John J. Kerrigan, Director of the Air Transport Division of the Transport Workers Union; and Mr. James Kennedy, Legislative Director of the Rail Labor Executive Association.

Mr. Kirkland, welcome before the committee. I recognize that you, like the Secretary, have time constraints. We will hear your testimony first, and any questions that Members may have, and proceed with the other members of the panel.

TESTIMONY OF LANE KIRKLAND, PRESIDENT, AMERICAN FEDERATION OF LABOR/CONGRESS OF INDUSTRIAL ORGANIZATIONS

Mr. **Kirkland**. Thank you, Mr. Chairman.

Mr. Chairman, thank you for giving me the opportunity to testify this morning.

I am here today to ask that Congress move swiftly to establish a Railway Labor Act Emergency Board through legislation to put Eastern Airlines back in the air. This interim measure would permit Eastern employees to serve the public, would maintain those employees' present working conditions, and would authorize the panel to conduct impartial fact finding and to make recommendations for a settlement of the dispute.

The National Mediation Board recommended the appointment of such a board, but the President refused to heed their expert advice. His refusal forced the workers at Eastern to go on strike and has made the travelling public the losers. It is time for Congress to fill the leadership void the President has created.

I want to make one thing very clear at the outset. The machinists at Eastern did not seek a strike. The flight attendants and the airline pilots at Eastern do not seek a confrontation. The AFL–CIO has done everything in its power to secure an honorable settlement without an interruption in transportation service to the public.

Mr. Chairman, no one wanted this strike except Frank Lorenzo.

In 16 months of bargaining with the machinists, Eastern did not soften any aspect of its wholly unreasonable demands for employee concessions. The company's first alternative proposal was made only two days prior to the strike deadline, and that offer was wholly and frightfully inadequate.

While the machinists agreed to accept the National Mediation Board's offer of binding arbitration to settle the dispute, Eastern has rejected arbitration.

The employees at Eastern—the unionized workers, particularly—want to go back to work. They want to see their company back to financial health. They want, once again, to provide the public with the outstanding service that made Eastern a great airline in the first place.

Frank Lorenzo says that he can't do that without drastically reducing the standard of living of Eastern workers. If you accept that, then how do you explain the profits of other carriers which treat their employees fairly and decently and pay them higher wages than Eastern? How do you explain the sizeable losses at Continental, the carrier with the lowest per-employee labor costs?

It is clear that, from the beginning, Frank Lorenzo and Eastern Airlines have had no intention of engaging in good faith collective bargaining, or of reaching a fair and equitable settlement with the machinists. Mr. Lorenzo's strategy has been to force a strike and to bust the union. And what of the disruption this would cause to essential air service? Frank Lorenzo's answer is simple: "The public be damned."

The labor movement takes no pleasure in watching frustrated air travellers attempt to cope with the consequences of this strike. That is why we have sought to avoid a strike and why we ask the Congress to require the appointment of an Emergency Board.

Beyond that, I can only say to the travelling public that as hard, as the strike is for them, it is harder for the employees at Eastern Airlines. Imagine if you would, being asked to take a yearly pay cut equal to your annual rent or house payments. Take it or leave it. That's what Frank Lorenzo is attempting to force on the machinists.

By engaging in this strike, the machinists, along with the pilots and flight attendants who are honoring the picket lines, are risking their careers and their long-term investment in Eastern—and they know it. For them, literally everything is at stake.

And just what is at stake for Mr. Lorenzo? Well, he has his other airline, which he has bolstered with Eastern's money. He can also continue to sell off Eastern, as he has done in recent months, in various pieces. And I suppose he can continue to play the leveraged buyout and corporate restructuring game—shifting, stripping, and liquidating assets while he wheels and deals his way to higher profits.

Whatever price is ultimately extracted from thousands of Eastern employees and their families, I'm sure Mr. Lorenzo will do quite all right. No wonder he hasn't shown an interest in good faith bargaining

The question I bring before the subcommittee today is this: why should the public suffer widespread inconvenience, as it clearly has in recent days, because of this corporate intransigence?

The Railway Labor Act contains provisions to deal with this type of situation. When, according to the act, a labor dispute "threatens substantially to interrupt interstate commerce to a degree such as to deprive any section of the country"—any section of the country—"of essential transportation service," then the President is empowered to extend the agreements in place and appoint an emergency fact-finding board.

By any measure, the strike at Eastern, by reason of the solidarity and fortitude of Eastern's employees, is not merely threatening to substantially interrupt essential transportation services, it is interrupting transportation services.

That strike came about because the company never engaged in serious collective bargaining with its employees. If there is to be any such bargaining in the near future, it will come about only if Frank Lorenzo is made publicly accountable.

A high-level, impartial fact-finding board is the tried and tested means toward that end. Thus, the Congress has it within its legislative power to turn the present destructive situation around and start the parties toward a constructive resolution of this dispute. The labor movement asks you to exercise that power now.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you very much, Mr. President, for your very thoughtful and very well-expressed statement. You framed the issues very well in this labor/management dispute.

Having lived through a number of strikes as a youngster in the iron ore mines of northern Minnesota, it touches me very deeply when you say that the labor movement has no desire, no love of disrupting the lives of other people and that it is hard on their families—those of the members who are on strike. They are without pay. I remember that very well.

I can remember, as a youngster, on Saturday saying to my father, "What do you mean? Soup again?" And he said, "Yes, and if there is anything left of the soup bone we will have it next week, too." So it is hard on working people, and it is hard on the travelling public.

But because this is the transportation sector, there is something unique about the nature of this labor/management dispute. The Railway Labor Act, as you rightly cited, does provide a process for public intervention, and a process that is essentially a public venture—service to the travelling public of this country.

Now, the Secretary said earlier that resolution of this dispute can't be done by Congress, but has to be done by the two parties. He went on to say the parties are further apart today than they were at the start. I think that is true, and I think we are at a point when there is a need for an outside entity to intervene and create a framework within which resolution of the dispute can come about. That's what this Railway Labor Act is all about, as you rightly said, when a dispute threatens substantially to interrupt interstate commerce to such a degree as to deprive any section of the country.

Eastern's operations are essentially in the north/south corridor of the East Coast, and if you look at the market shares in that market there are two concerns. First of all, Delta has 57.6 percent of the share in Atlanta, and Eastern has 35.7, and no other carrier is in double figures. That means that loss of Eastern in that market will create a competitive void either filled by the principle major competitor, Delta, or by no one. There doesn't seem to be any other carrier of significant interest in there to pick up that operation unless, possibly, it is Continental. So I think the point you are making is a very good one.

The question for us on the other side—I think that establishes the public interest to maintain a competitive environment for aviation in that section of the country most importantly impacted by the strike. But, secondly, at the end of the time period envisioned by the legislation are we likely to be better off than we are today?

What light can you shed on that question for us? I think your presence here is very significant from that standpoint.

Mr. KIRKLAND. Mr. Chairman, I think the record is quite clear. Of the two parties, Eastern and the unions—in this case, specifically the machinists—unfortunately, only one party is interested in collective bargaining. The other party has no interest in collective bargaining or seeking a reasonable collective bargaining resolution of this dispute.

It was not the machinists who urged the Mediation Board to declare an impasse in bargaining. The machinists wished to continue. It was the company that pressed for the declaration of an impasse.

When the Board proffered arbitration, as is the practice under the Railway Labor Act, the machinists accepted that proffer; the company rejected that proffer.

Today it is the machinists and the unions and the AFL-CIO that is quite prepared to place its case at the judgment of impartial parties who will carefully analyze and study the circumstances that lead to this dispute. We believe that this, unfortunately, is the only way out of this circumstance.

We would much prefer an agreement. We would prefer collective bargaining to work. We have a stake in collective bargaining. Trade unions do not exist in this country in order to strike.

The exercise of the right to strike is a painful resort. Unfortunately, there comes a time when you either surrender the rights and conditions and the aspirations of those whom you are privileged to represent, or you have to take recourse to the only tool that the law and our system permits you to exercise.

I hear a lot of talk about deregulation. Mr. Skinner talked of deregulation. There is one thing that hasn't been deregulated in airlines or in transportation or in labor, generally—the trade unions have not been deregulated. Our rights and the powers and the means by which we can pursue self-help are very closely circumscribed.

And not only any action, but any suggestion of the possibility of action has met with a blizzard of injunctions, as we see today. What is this deregulation? If you want a deregulated climate, then deregulate all of it and let us then go at the law of the jungle. But that is not the law. The law regulates the trade union movement. It regulates carefully collective bargaining.

When deregulation was brought to the airline industry it did not extend to the Railway Labor Act. I presume that those who, in their wisdom, oversaw this what I regard as aberrant and unreasonable and foolish deregulation to the extent that it went to, did not see fit to extend that to the trade unions of this country, continues to closely define their rights and the limits of their rights and the procedures.

And one of those procedures in that law is that in the event of an impasse, and when common sense and good judgment and experience tell you that there is not going to be any bargaining settlement reached because one of the parties doesn't want to bargain and doesn't believe in bargaining and doesn't believe in dealing with its employees on a fair and reasonable basis, then this is the only recourse.

Why should it be foreclosed in the name of deregulation or the free market? That is the law. That is the procedure set forth. It is a fair and decent one. It has been used successfully in the past, and we commit ourselves to cooperating with it.

Mr. OBERSTAR. Thank you, Mr. Kirkland.

My time has expired. I want to keep us on track.

I now recognize the gentleman from Georgia, Mr. Gingrich.

Mr. GINGRICH. Thank you very much for appearing today, Mr. Kirkland. I think it is an indication of the seriousness of the situation that you would come to talk about a single company strike. And I think it indicates the concerns that you have for what is happening with the union movement.

Mr. KIRKLAND. They are all my children, Mr. Gingrich. [Laughter.]

Mr. GINGRICH. I guess I have a couple of questions, though, about the situation. First of all, just to state the historical record—and I share, as I think I have made fairly clear today and on other public occasions, the concern many people have about Mr. Lorenzo's style of management and about the degree to which he has, in effect, been skimming money off the top of the company by paying it to Jet Capital and to Texas Air and doing other devices so that the company's financial statement doesn't reflect Mr. Lorenzo's financial statement. So I share some of your concern.

But I do think, for the record, that it has to be noted that the machinists seem to have very severe difficulties with the management of Eastern under almost any circumstance in the last 15 years, that their relationship with Mr. Borman and their characterization of Mr. Borman was comparable to their current relationship with Mr. Lorenzo, just not quite as intense. I could produce for the record, if anyone wants to challenge that, a whole series of quotes by one of the machinists presidents.

My question would be: How do we find a resolution where there is some reasonable likelihood that the machinists are actually working in good faith of the management that is committed so that both are committed to the survival of the company? I think I'm the second-largest Eastern employee center in the country in the Atlanta Airport, and I have lived now with this problem for 15 years and it proceeded Lorenzo. I wonder if you might comment.

Mr. KIRKLAND. Mr. Gingrich, over the past 10 years the trade unions on this property have contributed $1.5 billion to help assure the survival of this company. I don't know how much Mr. Lorenzo has contributed. I suspect virtually nil, nor do I believe he has much of a personal stake.

These employees have their livelihoods at stake, in addition to the concessions and give-backs that have been made over a period of years, $1.5 billion—which, incidentally, amounts to virtually the entirety of the total losses of this airline over that period.

Now, the problem that Eastern Airlines has—and it is a problem that a successive management did not grapple with. They have wasted the contributions that these unions have made and the concessions that its employees have made, they have dissipated those—is not recognizing that the problems of Eastern Airlines, the reasons that Eastern Airlines cannot operate profitably, is not because the wage levels that are paid at Eastern Airlines.

I give you just a simple fact. The indebtedness—this is public, recorded in "USA Today" last week—noted Eastern's huge $2.4 billion debt load. Interest on that debt comes to more than $800,000 a day. Roughly that debt service load, as a cost, exceeds the machinists payroll. And that service load goes on, and nobody has figured out how to lay off the bank. You can lay off workers and you can demand concessions from workers, but the only way you get concessions when you hire the money is, I presume, bankruptcy.

Mr. GINGRICH. I guess my question, Mr. Kirkland——

Mr. KIRKLAND. But if you want to look at the nut of the problem as to why this company has done nothing except, giving the pressure of that debt load, try to transfer that load onto the backs of the workers in this company, there you have the core of the problem.

Mr. GINGRICH. I don't disagree with that analysis, although I would point out that the initial phase of indebtedness goes back at least to the 1960s, and that if you look at a comparative study, for example, of Delta and Eastern where Eastern was far and away the larger company in the late 1960s, the difference in their approach to indebtedness and then the impact of high interest rates prior to Lorenzo already gave Eastern a substantial disadvantage competitively in terms of dealing with other companies.

My question, Mr. Kirkland, would be—and I say this in a context where newspapers that are normally much more sympathetic to the union movement, such as the "Washington Post" and "New York Times"——

Mr. KIRKLAND. I hadn't noticed that.

Mr. GINGRICH [continuing]. Seem remarkably——[Laughter]

Well, historically I think they have been far more liberal and far more willing——

Mr. KIRKLAND. I scan their editorials quite regularly, and I would like very much to see some of those friendly editorials.

Mr. GINGRICH. So from your standpoint you don't regard the fact that they seem skeptical, to put it mildly—they range between being skeptical and hostile to the idea that government has a direct obligation to be involved in company/union management in a single company strike.

Mr. KIRKLAND. I sat here and listened to Mr. Skinner this morning state very piously that this should be left to the free market, that people should exercise their rights and reach a resolution by that means and government should not intervene unless the unions exercise one of their rights under the law, reaffirmed by unanimous Supreme Court decision. If the unions exercise one of their rights, then the government should intervene massively and you will have special legislation.

I suggest to you that there is an element of hypocrisy in this. It only does not want to intervene when not intervening serves the purposes of a certain party, but not in the other case.

Mr. GINGRICH. There is a point I would make, and then I want to go pursue that topic of secondary boycotts for a second. It doesn't surprise me to see the "Wall Street Journal" strongly supportive of President Bush's position. I just find it curious that you don't seem to be a little disquieted by the fact that the "Washington Post" and the "New York Times" seem to be equally committed to a fairly hard line on the secondary boycott issue, that they don't see it as a legitimate extension.

Mr. KIRKLAND. My observation over the years, Mr. Gingrich—and I have no desire to quarrel with those who buy ink by the barrel—is that the free press, particularly the editorial section of the press, belongs to those who own one, just as Mr. Lorenzo owns an airline.

Mr. GINGRICH. Two last questions. It seems to me—and I just want to clarify something—that in your testimony in paragraph two where you say, "It is time for Congress to fill the leadership void the President has created," I would just like to suggest an alternative, and give you a chance to rebut it, that, in fact, President Bush has exercised a very decisive opinion. It is not one you agree with, but Secretary Skinner did not come up here vacillating or confused; he came up here with a rather clear and decisive opinion, although you clearly disagree strongly with it.

Isn't that a more fair characterization that we were, in fact, in the middle of an argument about which kind of leadership, and not a question of a vacuum of leadership?

Mr. KIRKLAND. I don't know whether you can characterize a decision to do nothing in the face of a clear responsibility as leadership.

The legislation sets out the terms under which that responsibility is intended to be exercised. That legislation has not been repealed. That legislation calls upon the President to exercise certain responsibilities, and the refusal to do so—if that's what you call leadership, then the job of the President is going to be very easy.

Mr. GINGRICH. My last question would fit that, I guess, in that you do have the anomaly that only transportation unions are allowed to have secondary boycotts. From your position, are you—and the President is saying, in effect, the way to end that anomaly is to eliminate the right of secondary boycott of transportation unions. Why should transportation unions have a unique power to, in effect, blackmail or disrupt people who have no direct tie to the argument in a way that is not true of any other kind of industry in this country?

Mr. KIRKLAND. I reject your terms, sir. I do not regard the exercise of solidarity action by trade unions as blackmail. It is not. I believe blackmail is a penal offense in this country, and the use of that——

Mr. GINGRICH. Then how would you like to characterize——

Mr. KIRKLAND [continuing]. Term is unwarranted.

Mr. GINGRICH. If you are a commuter in Chicago——

Mr. KIRKLAND. There are many anomalies in the Railway Labor Act. The existence of the Railway Labor Act arises out of the fact that there are peculiarities to the rail and air transportation systems, and habits and practices that have evolved over the years in those industries would warrant that particular approach.

The Railway Labor Act preexisted the National Labor Relations Act. It goes back to 1926. It has a long and honorable history. The institutions in this country and those industries are accustomed to it. They have lived under it. They have abided by it. It has worked. It is still on the books. I suggest it be used.

Mr. GINGRICH. Thank you.

Thank you, Mr. Chairman.

Mr. **Oberstar**. The gentleman's time has expired.

The Chair will recognize members in reverse order because many were cut off short in the last round of questioning.

The gentleman from Tennessee, Mr. Clement.

Mr. **Clement**. I know you've stated very clearly what the problem is concerning Mr. Lorenzo. From what Congressman Gingrich says, do you agree with him that these financial problems have lingered on for many years? Or is it really been more significant a problem under the regime of Mr. Lorenzo?

Mr. **Kirkland**. I think the latter is the case, and I think it is clear from the record that previous management at least grappled with it in an honest effort, I believe, to keep an airline afloat, whether you regard that management as competent and able, or not.

Mr. Lorenzo has systematically, since he took over this airline, proceeded to dismantle it and to sell off its most profitable assets and transfer those assets on favorable terms to other holdings of his. Now, that pattern is quite clear.

The one part he is keeping flying today aside is the part of the line that he wants to sell to Mr. Trump.

I suggest to you common sense gives you the answer to whether he has any interest in building this airline, gaining market share. He has deliberately set about to reduce its market share and to shrink this line.

Mr. **Clement**. Do you think Mr. Lorenzo is prepared just to bust the unions, or is he interested in operating the airline as a nonunion, or just sell off all of its assets?

Mr. **Kirkland**. All of the above. I don't know that Mr. Lorenzo entered this world or entered this industry with any cold calculation or any venom against any party. I think he is—I don't know him except from what I have seen and read and heard. I think he is a cold, calculating man that looks at an enterprise as an opportunity to make a buck one way or another as fast as possible.

Unfortunately, our whole economy is becoming riddled with that state of mind. Unfortunately on the part of many of the best and the brightest coming up in industry, the purpose of industry is not to produce goods and services for the benefit of the public or as a means by which people can realize their aspirations in life by working and doing that, but it is to make a fast buck, to strip assets and turn them into cash—to liquidate them.

Just like that financier said after the crash, "Liquidate labor, liquidate land, liquidate everything." He is a liquidator.

Mr. **Oberstar**. The gentleman's time has expired.

The Chair recognizes the gentleman from North Carolina, Mr. Ballenger.

Mr. **Ballenger**. Thank you, Mr. Chairman.

Mr. Kirkland, in your statement—in fact, in two places—you mention the fact that Eastern did not soften any aspect of its unreasonable demands for employee concessions. My understanding—and maybe I'm incorrect, but let me make the statement—is that the pilots and the flight attendants did accept whatever bargaining situation was originated there, and that I'm not sure if the machinists ever changed their bargaining position. Am I wrong?

Mr. **Kirkland**. Yes you are, sir.

Mr. **Ballenger**. In what area?

Mr. **Kirkland**. There was no agreement with the pilots.

Mr. **Ballenger**. What about the flight attendants?

Mr. **Kirkland**. No.

Mr. **Ballenger**. There was no agreement anywhere with anybody, then?

Mr. **Kirkland**. No.

Mr. **Ballenger**. Okay.

Well, did the machinists, in that particular area, make alternative proposals, which you say Eastern did not?

Mr. **Kirkland**. Yes, and I think that is a question that you can address directly to the machinists that are here. But the company's last offer in many respects was worse than their previous offer.

Mr. **Ballenger**. I'll pass.

Mr. **Oberstar**. Thank the gentleman for his brevity.

The Chair recognizes the gentleman from Illinois, Mr. Costello.

Mr. **Costello**. A quick question, President Kirkland. I'd like to read you a statement that is attributed to Secretary Skinner when he was head of the RTA in Chicago over the dispute in September 1988. It says:

> The head of the regional transportation authority Wednesday called on federal legislators to uphold their public responsibility and head off the looming strike against the Chicago and Northwestern Railroad. The RTA chairman, Sam Skinner, said a strike against the railroad by members of the United Transportation Union scheduled for 12:01 a.m. Friday, would result in a massive disruption of service for area commuters. Skinner urged federal legislators to intervene in the dispute over freight train crew size saying, "It is Congress' public responsibility to this region to keep commuter lines open."

It is very clear that Secretary Skinner, then the head of the RTA, wanted Congress to intervene in that dispute. Do you see any difference between this dispute and the dispute of September 1988?

Mr. **Kirkland**. That's just a clear case of where you stand is where you sit, and at that time he saw a regional and localized dispute as a national emergency warranting this action. I suggest to you that this case is somewhat more far-ranging.

Mr. **Costello**. Thank you, sir.

Mr. **Oberstar**. I thank the gentleman for his brevity.

The Chair recognizes the gentleman from Ohio, Mr. McEwen.

Mr. **McEwen**. Thank you, Mr. Chairman.

I'd like to ask Mr. Peterpaul, if I may: you have been virtually to this point many times in the case of Eastern. If you had February 23, 1986, to live over again and the question as to whether or not the machinists should join ALPA and the Transport Workers as an agreement to keep Eastern as an entity or to sell to Frank Lorenzo, in hindsight was that the right thing to do?

Mr. **Peterpaul**. If I may, Mr. McEwen, there is a little bit of background that I should get into, because when you go back to that period of time, that was when Mr. Borman was president of the carrier. I can remember very distinctly it was during the month of February when Frank Borman came over to where the federation was meeting in Miami, Florida, and met with myself and the president of my organization, and with him was Mr. Leonard and William Usery. We had a meeting for several hours that he asked for to talk about the future of Eastern Airlines and what a dire need it was at that time.

At that very meeting—I think was from 5 to 7 or 8 in the evening on a Friday—Mr. Borman said that the last thing he would ever do in the world was to sell his airline to Frank Lorenzo. He made the comment, "Before I sell it to Frank Lorenzo I would bankrupt. I could not do that to my employees." That is the whole scenario—exactly what happened.

It was 48 hours later at roughly 1 or 2 in the morning on a Sunday or Monday morning when the transaction did take place and the airline was sold to Mr. Lorenzo.

We did not have much voice in that transaction at that time, and if we did we certainly, based on past experiences with Mr. Lorenzo, would not have wanted to participate in any transaction the likes of whatsoever with that individual.

Mr. McEWEN. As the board members point out, and as you mentioned, on Sunday evening they had three options— bankrupt the company, come to an agreement with the unions, or sell to Frank Lorenzo.

Mr. PETERPAUL. I believe there were other options, Mr. McEwen. There were other options. They asked us for certain representations to which we committed ourselves under certain conditions, which were rejected.

Mr. McEWEN. I was just curious——

Mr. PETERPAUL. So I disagree with you totally that there were no other options there.

Mr. McEWEN. I was just curious as to how you would view it when the facts had played out——

Mr. PETERPAUL. I wish that option was ours and that of the other labor organizations to make the determination at that time. Don't forget, we had an experience with him on Continental Airlines. We had gone through his reign of terror before and manipulations of the bankruptcy laws.

Mr. McEWEN. Captain Duffy, is that basically the way you remember it, that when ALPA and the Transport Workers agreed and Mr. Wimsinger got Mr. Bryant on the phone at 2 in the morning, that is basically the way it transpired?

Mr. DUFFY. I think in all of these things we each know our little compartment of it. We were negotiating like crazy to get a contract on our side that would perpetuate Eastern. Fortunately, we were able to reach agreement. The machinists were not, and that is unfortunate. But that is collective bargaining, and each of us has to deal on our own contracts.

Mr. McEWEN. I repeat that my relationship in this whole thing is that I am very proud of my association with Eastern, and I regret to see it go.

Thank you very much.

Mr. OBERSTAR. Thank you.

The gentlewoman from New York.

Ms. SLAUGHTER. Thank you, Mr. Chairman.

I think part of my responsibility as a member of this committee is to try to illuminate same of the underlying issues here. If I may, Mr. Kirkland, I'd like to pursue a little further the line of questioning that I was able to start with Secretary Skinner.

Some things I am going to say are what I believe are common knowledge, and if I am incorrect I'm going to ask that you correct me. First, Mr. Lorenzo did not want the Emergency Board, and that he told United States officials and Mr. Skinner that Mr. Lorenzo had assured him——

Mr. KIRKLAND. He had about half the lawyers in town working against it.

Ms. SLAUGHTER. But he had said that the Eastern pilots would fly. And when he told them that he knew, as I understand it, that he had already had an agreement with Continental Airlines to provide some 500 pilots to fly, which would, in my opinion, somewhat negate the notion that he was speaking truthfully to the Secretary of Transportation.

The fact that over the last number of years he has, as you have pointed out, been selling off all the profitable parts of this airline, and he has been neglecting to replace the aging equipment, and that he didn't want the Emergency Board, and that he maybe was not quite as truthful as he should have been with the Secretary of Transportation makes me wonder, and I would certainly like your perception of precisely what it is that Mr. Lorenzo has in mind here.

Mr. KIRKLAND. I think what he has in mind is what he has been doing—liquidating this line to his personal advantage one way or another.

Ms. SLAUGHTER. For the purpose of reorganizing it, as he did Continental? Or to just destroy it outright?

Mr. KIRKLAND. I can only speculate. Certainly not to destroy it, outright. I don't think he wants to liquidate nor destroy assets that he has. But I do think he wants to convert them into the form where it is most advantageous to him.

Ms. SLAUGHTER. One question I have for Captain Duffy: sir, an experienced pilot with Eastern—let's say a person with 20 years seniority—are they risking that seniority by striking? If they were to go to another airline, would they transfer that same seniority? Or would they have to start over?

Mr. DUFFY. Under the current rules if they simply change airlines—their seniority rank does not transfer. I might add that many pilots have left Eastern for jobs at other carriers and they have sacrificed their seniority and gone to the bottom of the next airline's seniority list rather than work under this tyranny.

I hope everyone listened very carefully to what President Kirkland said about the distress of being on strike, because my members certainly understand that they are out there on a sympathy strike with the machinists where it may cost all of them their jobs and their seniority. They are terribly concerned about that.

But, more than that, they are concerned that this management has no commitment to the long-range viability of Eastern Airlines, and that is why they have displayed this tremendous solidarity, because they see no solution here from this management, and that's why we feel so strongly about the necessity of a third-party agreement, because we see no commitment from this management to the collective bargaining process.

Ms. SLAUGHTER. If I can just make one statement to follow up, in Rochester, New York, my home town, the 15 Eastern employees working from the airport were laid off last night, even though they are not on strike. And so I see that this has even more far-reaching effects.

Thank you very much.

Mr. Oberstar. We thank the gentlewoman for her brevity.

The gentleman from Georgia, Mr. Lewis.

Mr. Lewis. Thank you, Mr. Chairman.

President Kirkland, let me thank you for your very moving statement and your moving response to the questions raised by my colleagues.

As you know, I come from the city of Atlanta where there are 700,000 Eastern employees. The airport—also represented by my colleague from Georgia—is the second-busiest, second-largest airport in the country. I was through there last night, and I saw many Eastern employees—those that were working in the counter closing the counter that had been laid off—crying. It is an emergency for these people. Some of them may never, ever return to those counters to work again. They are losing their jobs.

I'm sure Mr. Lorenzo is not crying. Do you think this is a deliberate effort on the part of this man to bust the union and put this company out of business?

Mr. Kirkland. Congressman Lewis, you have put your finger on the disparity that exists in this situation and increasingly in other similar situations where working people face harsh management devoted only to what can be converted into money.

Labor, the working people on Eastern Airlines, pilots, flight attendants, machinists, have a stake in the survival and the endurance of this airline. It is their life. They have put many, many years of their lives, for the most part, into this work. They are proud of the work they have done. They have been proud of the company that they worked for and the service that they have performed for their country. They are loyal working people—loyal to their country, loyal to their employer—they want nothing more than to keep that service in being and keep those careers that have enabled them to do the work that they enjoy and that they want to do.

The great disparity is that on the management side we have one of these people, one of these corporate adventurers, coming into the picture who has no loyalty. He'd just as soon be operating a set of other corporate toys as this, and he has his escape hatch. He can leave. He won't be hurt. He has nothing really at stake. He is indifferent and, in fact, is prepared to use the impact of this on the public to help achieve his aims, and that is the cold, raw fact of the situation.

This man and those in industry whom he typifies— and, unfortunately, there are too many of them today—look at this company not as a big family and not as an institution that serves the public interest and serves public welfare and performs a valuable and vital service in our economy and sustains thousands and thousands of families; he looks at is as something to be trifled with, dismantled if it gets opportune, and shifted over to other holding arrangements that he has—milked, bled. And when the maximum has been gotten out of that, to discard the carcass and walk away. He'll walk away. There are other golden parachutes around. I'm sure he doesn't even need one. He's not even on board the ship.

Mr. LEWIS. Thank you, President Kirkland.

Mr. Chairman, I yield back the balance of my time.

Mr. OBERSTAR. We thank the gentleman for his brevity.

The Chair recognizes the gentleman from New York, Mr. Molinari.

Mr. MOLINARI. One of the arguments that we have heard today against this proposed legislation is the fact that we would be deterring any decision for 60 days, and that would only prolong the agony, create a greater debt, etc. If, in fact, we act on legislation there is nothing to say that we couldn't shorten that 60-day period of time.

My question to you, Mr. Kirkland—maybe to Mr. Duffy—would be: What about shortening the period of time to overcome those objections? How short a period of time could we act? Would 21 days, for example, be a reasonable period of time to permit the Board to do its work and come up with a decision?

Mr. KIRKLAND. I personally haven't given that any consideration, Mr. Molinari. We would be satisfied to see the existing terms of the law observed and exercised. And, in fact, when an Emergency Board is invoked, the service would be resumed. The service would be resumed and would continue during that 60-day period, and at the end of that 60-day period, when the recommendations are made, I'm quite confident they would point a path to the final resolution of it.

Mr. MOLINARI. I understand, but the argument is that——

Mr. KIRKLAND. The public interest in this matter is served immediately with the appointment of that Emergency Board.

Mr. MOLINARI. Yes. I'm seeking to see if there is a mid path here where there is perhaps a compromise in the period of time. Maybe I could ask that question in my limited period of time to Mr. Duffy, representing Air Line Pilots Association.

Mr. DUFFY. For us, Mr. Molinari, we would accept any reasonable period of time that would produce a fair result, and we would bind ourselves to that result. We think there is some argument to be expeditious here, but not at the cost of a fairly arbitrated or a fairly heard and recommended agreement.

It may not take 60 days, and it may be more than 21. We're not sure what it is, but what we do feel strongly about is that Eastern can't take a lot more of these body blows. It needs a global settlement. It needs not only a settlement with the machinists, but with the pilots and with the flight attendants so that 6 months from now we are not going through this same charade again, particularly if this management is going to stay in charge.

It is better to have one fix put on this company that gives it a chance to be a real airline and survive, rather than this constant labor turmoil that has gone on.

Mr. PETERPAUL. If I may, Mr.——

Mr. MOLINARI. We don't have a crystal ball, though. We don't know how long a period of time would be that abbreviated period of time and allow the work to be done that has to be done to effectuate a settlement. So I am asking now for your recommendation on what you feel a minimum period of time would be.

Mr. **Peterpaul**. If I may, Mr. Molinari, I think that everybody has looked for an expeditious handling of this problem. I could remind you that the 30 days is a maximum allowable time. Whatever is expeditious is expeditious, but they could get together and make a determination at the evidentiary hearings, and whatever it takes is appropriate. This is a maximum allowable time. After they make the report to the President, then there are built-in factors there. But it is not a question that it has to be maximum. What is the minimum? I think it was just assured, for whatever this panel is that is assembled, to give them an appropriate amount of time.

We certainly would like to have it expeditiously handled by any stretch of the imagination. But, as I said, it is not mandated at 30 days; it is when they get the job done and make the report. The 30 days is maximum.

Mr. **Duffy**. Let me just add one thing.

Mr. **Molinari**. Sure.

Mr. **Duffy**. With all the expertise that exists—a National Mediation Board whose sole job is to referee the labor disputes in our industry and with the Labor Department over there—it is a mystery to me why the Department of Transportation is involving itself so heavily on the labor side of this issue. We have got plenty of expertise. As a matter of fact, the National Mediation Board recommended a Presidential Emergency Board in this situation, and the experts simply aren't being listened to.

Mr. **Molinari**. Let me ask just one last question. I sit here and listen to Mr. Skinner and I have read the testimony. It seems to me that Eastern Airline is headed on the path to oblivion. I don't see how those concessions are going to turn this thing around and make Eastern a profitable airline. So what is the best that we can hope for? What kind of solution do you envision as the best possible scenario to permit the workers to go back to work and for that airline to survive?

Mr. **Kirkland**. That's a large question. I agree with your first point. The problem that Eastern faces did not rise because of their labor costs. That is not the source of their losses. And no matter what might be extracted from the backs of the working people on that line, it is not going to put them back in business. There are larger questions. I pointed to the debt load.

Maybe it is a little like New York. You'll recall that New York had the same problem.

Mr. **Molinari**. Yes, indeed.

Mr. **Kirkland**. And you've got the bankers and the unions and everybody at the table and worked it out.

If you want to look at the long-range financial viability and competitiveness of this line, if you are seeking it only by sweating it out of the more and more and deeper and deeper cuts in the living standards of Eastern's workers, you're going down a fruitless path.

Mr. **Molinari**. What you're saying, if I may interrupt, is that the problem is not the labor costs so much as it is poor management on the part of Eastern Airlines? Is that what you are suggesting is the problem?

Mr. **Kirkland**. Certainly currently not just poor management, but management that is not interested in managing all of its assets, but is dedicated to shrinking those assets, milking those assets, and dealing them off.

Mr. **Molinari**. Would the sale of the carrier then pose the best hope for the public, at large, and for the employees?

Mr. **Kirkland**. That's not my trade, sir. [Laughter.]

Mr. **Oberstar**. The gentleman's time has expired.

The gentleman from New York, Mr. Towns.

Mr. **Towns**. Thank you, Mr. Chairman.

Mr. Kirkland, thank you for your testimony. I have read it, and it is very pointed.

I do have a question. You raised a point and said that it is clear from the beginning that Frank Lorenzo and Eastern Airlines have had no intention of engaging in good faith collective bargaining or reaching a fair and equitable settlement with the machinists. Is there anything that you might want to add that might not readily meet the eye or immediately prick one conscious that you might want to say above and beyond that as to why you feel that this exists?

Mr. **Kirkland**. I could embellish it and expound upon it, I suppose.

The parties who have been directly involved in dealing with that management and with Mr. Lorenzo can go into the fine and gruesome details of it, I think, far better than I.

Mr. **Peterpaul**. Let me just say this: I think everybody sitting at this table is a firm believer in the process of collective bargaining, but since that contract was opened with the machinists union in October 1987, basically the economic position of Eastern Airlines has not changed, and the whole process of collective bargaining, whatever process there was, Congressman—because I think when you read my remarks you will see we had about ten hours of meetings totally when they immediately ran to the board and asked them to be released to a strike situation. So it is obvious on the surface. We knew, basically, from past experience with Frank Lorenzo.

I can remember one specific incident when we knew early on when he came on board, because, as Mr. McEwen mentioned earlier about the telegram sent by Charles Bryan to Mr. Lorenzo. That was in 1986, and he tried to get it off on an equal and an even keel. In good faith Charles Bryan sent that telegram to Mr. Lorenzo and told him we want to work together. The response Mr. Bryan got from Mr. Lorenzo was that he doesn't meet with union officials.

I can remember one specific incident—and I think I testified to this before one of the courts because we have so much litigation going on in Eastern Airlines. I think it happened on January 12, 1987, when I was on my way from my office here from Washington, D.C., down to Houston, Texas. I got a call from an official—and I believe it was an official at Continental, at that time, but was in Miami going to look over the Eastern operation for Frank Lorenzo and what management determinations to make—and he asked me to meet with him, and so I did.

I went to the Miami Airport on my way down to Houston. I'd prefer not to name the individual at this particular time. I sat down and met with him in the terminal of Eastern Airlines in Miami, Florida. He said, "John, we've known each other for several years. Let me just make something clear to you. Mr. Lorenzo is asking you for certain concessions." My response was, "Well, our contract isn't even open yet. Our contract doesn't open for several more months." He said, "Well, it doesn't make any difference. They are going to ask for it now and it is going to be roughly among all of the unions over 400 million. Your chunk is going to be 200-some million, and you'd better give it to him."

I said, "Listen, this is a collective bargaining process, and when we open up the contract we'll talk about it." He said, "He's going to get it whether you like it or not." I said, "What do you mean he's going to get it whether we like it or not?" He said, "He's going to take it from you, because he'll just sell off pieces of these airlines, he'll transfer whatever good assets there are over to Continental, and the rest will go down the tubes."

I said, "Wait a minute. There are bargaining processes to go through and we have got to comply with the law. These things are just the way it happens in America." He said, "Laws don't bother Mr. Lorenzo. What he can't gain in one way he gets in another way. He can buy anything he wants."

With that I got up and departed for my airplane.

This has been the attitude of that man since the day he walked on Eastern Airline property. And I think this tells you the history of where we are and why we are what we are today.

I think when we talk about this Emergency Board the thing that we are keyed to is the high visibility. We believe in the bargaining process, but the bargaining process on Eastern Airlines to this date is critical. It is something different than a normal situation, and it has gotten a little bit out of hand.

The high visibility of an Emergency Board will bring about and inject the public and public opinion. Nobody can turn away from that. And, to us, this is what has to be done.

I listened to Skinner sit here, and what does he say? He said one thing this morning that struck me right between the eyes with a sledge hammer. They would prefer bankruptcy, basically, than appoint an Emergency Board. Thousands of lives flushed down the toilet in a bankruptcy? At the end of the bankruptcy lines before a bankruptcy judge like we went through on Continental and Braniff? All the incidents these airline employees have had since deregulation that has been created for them?

Everybody talks about everything else—the travelling public. Who is talking about 28,000 workers on Eastern Airlines. Since Frank Lorenzo came, 14,000 have been laid off.

Mr. TOWNS. You sure answered my question, no question about that. [Laughter.]

Mr. OBERSTAR. The gentleman's time has expired.

Mr. PETERPAUL. I get very emotional over this one when there are so many people's lives at stake, Congressman. I apologize.

Mr. TOWNS. Thank you.

Mr. OBERSTAR. The gentleman's time has expired. The witness has, indeed, responded.

The gentleman from California, Mr. Packard.

Mr. PACKARD. Thank you, Mr. Chairman.

Mr. Kirkland, we are in a unique situation here in this hearing. We find the unions almost reversed and the company almost reversed. Here we have the unions asking to prevent a strike, and that is a first in my experience, and we are asking the companies to allow the strike to go on—rather a reverse scenario.

If this bill were passed and there was not a settlement as a result of the emergency panel and it went to a congressional mandate, is it possible that a congressional mandate could require a company to continue to operate at a loss?

Mr. **KIRKLAND**. I doubt very much whether that would be in the terms of any statute, sir. I do not know what you mean by an act of Congress requiring a company to operate at a loss. Whether or not the company operates at a profit or at a loss, I presume, is governed by other factors.

Mr. **PACKARD**. Well, of course it does, but, as we know now, the status quo is that it has been operating at a loss. And, of course, there is a request for increased expenses and increased cost to the company, and, of course, the company is asking for a decrease of cost by virtue of employment costs.

If a mandate came out of Congress, it would appear that it could mandate a company to continue to operate, and it could mandate for a company to continue to operate at a loss, and that would be a unique situation for the private sector to be in for the Congress to be in a position to do that. But you do not see that as a possible scenario?

Mr. **KIRKLAND**. Requiring a company to continue to operate at a loss? No.

Mr. **PACKARD**. Mr. Duffy, let me ask you a question in relation to the bill, itself?

Mr. **KIRKLAND**. You can strip the company of any rights of recourse ultimately to bankruptcy for any number of reasons, which I doubt very much that the Congress is prepared to do.

Mr. **OBERSTAR**. The chair wants to remind members again that we are going to get to the other members of the panel after Mr. Kirkland has concluded.

Mr. **PACKARD**. I see. I'll get to Mr. Duffy later then. Thank you.

Mr. **OBERSTAR**. The Chair recognizes the gentleman from California, Mr. Bosco.

Mr. Bosco. Thank you, Mr. Chairman.

Mr. Kirkland, the Secretary of Transportation set out a scenario this morning whereby he and the President are spectators in this scenario, and they feel that both parties have the legal right to shoot it out amongst themselves and the government shouldn't interfere with that. If you use all of your—first of all, they are asking you not to use all of your ammunition, however. Second, they say if you do start to use all your ammunition they are going to come and take it away from you.

Mr. **KIRKLAND**. It doesn't make it worth much, does it?

Mr. Bosco. It doesn't, does it. But I wanted to give you a chance to express to the Congress—and perhaps beyond that. You are the president of one of the most powerful labor organizations in the world—how the working men and women in this country view that. Would the President's honeymoon be over were he to advance such legislation? Would it be another PATCO strike? On a scale of one to ten, how would labor view such a move on the part of the President?

Mr. KIRKLAND. Well, sir, I was never party to a honeymoon. I was not even invited to the wedding. [Laughter.]

I don't really look at it in those terms on those big questions that seem to haunt a lot of people. What does this mean with regards to how labor will function and manage under the Bush administration? We'll do the best we can. We have lived under difficulties and adversities for well over a century. We'll manage. We'll hope that we still have persons in public life who regard a key part of their responsibilities to be to concern themselves with the welfare and the aspirations of plain, ordinary working people, no matter what their craft or skill or profession.

I'm reasonably satisfied, and I hope, there are quite a lot of them in this Congress, and that is why we are appealing to you here.

Frankly, I don't know what to make of the posture that Mr. Skinner expressed today. It seems full of contradictions. He wants the market place, as far as buccaneers are concerned, to wheel and deal in this market place according to what is best for his pocketbook, or the main chance, or the opportunities that exist in the market place. And there is no concern to an administration that gave an oath to live up to the Constitution which, among other things, provides for the general welfare.

However, if labor, on the other hand, exercises a legal right, reaffirmed by unanimous decision of a court that is not notorious for issuing pro-labor decisions, to exercise the right, then the government will intervene into this market place and strip us of that right.

I suggest to you that that doesn't send a very encouraging message as to the degree to which fair play and equity and balance in the relationship between labor and management will be played out for the next four years. I hope it improves, but that's not a good start.

Mr. BOSCO. Thank you, Mr. Chairman.

Mr. OBERSTAR. We thank the gentleman.

The Chair recognizes the gentleman from Oregon, Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman. I will try to be brief.

I'd just like to reflect a moment on what you just said, President Kirkland, because it seems to me inherent in collective bargaining is the principle that both sides have to come to the table because each side has something to lose. The question here is, I guess: does Mr. Lorenzo have anything to lose? I would quote from that radical journal, the "Wall Street Journal," of April 7, 1988,

> Yet, thanks to Mr. Lorenzo's masterly corporate architecture, huge losses of subsidiaries don't stop cash from moving to the top. While the airline's public debt holders anxiously watch the deficits close in on half a billion dollars, the parent company keeps raking in from the airlines an assortment of management fees, airplane rent, airport gate rent, fuel purchase commissions, and other payments. Upstreaming of cash, as company officials call this, has totalled more than $150 million for the parent in 1987.

So I guess the question here is: do we come to the table equally? Does Mr. Lorenzo have to bargain in good faith? I think the conclusion you would draw and the conclusion I would draw is that he does not. He has managed to insulate himself from the process. Would you agree with that conclusion?

Mr. **Kirkland**. I think all the evidence and the record of events leads you to no other conclusion.

Mr. **DeFazio**. Which would certainly bolster the case for an intervention by the government, since the inherent balance that we see in labor/management relations doesn't exist in this case.

Finally, I guess labor, perhaps—since we have heard from the administration, they would suggest that the solution to this situation is that if it gets worse they will outlaw secondary boycotts. Again, I don't think they have a chance of passing such legislation, but that is their response.

Perhaps labor has a response? I don't know that we could deal with Mr. Lorenzo, but how about future situations? Is there something we should be dealing with here in legislation that has to do with leverage buyouts, junk bond buyouts, vertical integration, horizontal integration? Do you think there is something we could be doing here?

Mr. **Kirkland**. Very much so. And we have, on occasion, represented our views on these issues before various appropriate committees of Congress. I testified just a couple of weeks ago on the implications and the consequences of this craze of leverage buyouts, and it is an enormous waste of capital.

I heard Mr. Skinner talk about how vital competitiveness was. Well, one of the things that is ruining competitiveness and wasting the capital and investment that we need to enhance it is the enormous dissipation of capital in these leverage buyouts wasting billions and billions of dollars without producing a single product or unit of service as a consequence, or even intended to—simply to keep the money churning and ratcheting up for the benefit of a few. That's a major problem that I think the Congress should address, and it has many aspects.

One of the ultimate consequences of that is what you face directly in this situation: the ultimate case where a company is saddled with enormous debt, and then, being unable to lay off the bank, or to extract concessions from Wall Street, turning that pressure around on the work force and trying to get those heavy interest payments out of the hides of the people who work for that company and perform those services. That exists in this situation, and it is not a limited, peculiar problem peculiar to Eastern Airlines. It is a factor, but it is part of a general problem in our society.

Mr. **DeFazio**. Thank you, Mr. President.

That's the emergency legislation I'd like to support.

Mr. **Oberstar**. I thank the gentleman.

Our last member is the gentleman from Colorado, Mr. Skaggs.

Mr. **Skaggs**. Thank you, Mr. Chairman. I'll pass.

Mr. **Oberstar**. President Kirkland, we thank you for your presentation this morning and afternoon, and for your participation in the hearing, for the light that you have shed on the issue at hand. Your presence here certainly underscores in a very dramatic way the significance of this issue to all of the labor movement and to all Americans.

Mr. **Kirkland**. Thank you, Mr. Oberstar.

Mr. **Oberstar**. We will proceed with the other witnesses. We will have statements, and any part of their statement they wish to include in the record in full will be so included. If you wish to summarize your statements, please proceed to do so.

We will begin with Mr. Peterpaul from the International Association of Machinists and Aerospace Workers.

TESTIMONY OF JOHN F. PETERPAUL, GENERAL VICE PRESIDENT, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

Mr. **Peterpaul.** Mr. Chairman, I'll forego the statement on the merits that I hope the committee reviews it pretty thoroughly for the expediency of time. I think it is very self explanatory with the attachments to it.

I do want to bring one thing to everybody's attention.

Some comments were made a little bit earlier about the threat of bankruptcy, and I'd like to make one comment about that if I may, Mr. Chairman.

One thing that everybody fails to realize when they look at the employees of Eastern Airlines is that those employees initially in 1983—I don't know exactly what the value of it is today, but it is pretty close—when they negotiated an investment program with Eastern Airlines, they put up $260 million for a class of preferred stock that is held in a trust. I know the machinists' union has 28 percent of it.

When we talk about a situation and the possibilities that could happen on Eastern Airlines, these employees have a big stake—all the employees. They have a $260 million trust there that is theirs. Outsiders are not realistically looking at what they have got on the table and what they stand a chance to lose.

But I think to them it just means a little bit more, because when we talk in terms of threats and things like that we are talking about bankruptcy, and that means jobs, and that is our ultimate concern. Our concern is jobs.

I think when you review—and if you talk to the employees of Eastern Airlines, whether it is a machinist, pilot, or flight attendant, they are concerned. They look at it and say, "Listen, what about dignity? What about work environment?" All these things apply. Slaves had jobs. What is the difference.

That property down there has been a torture chamber for the past few years, and the people are getting fed up with it. We come to you with this issue. We bring it to your attention. They're crying for help. They're crying for what? What are we here for today? An Emergency Board to bring it to everybody's attention and bring it to public view so that action can be taken and they can get justice, whatever it may be.

So with that I just want to summarize.

Let's not forget another thing, too, Mr. Chairman. When they talk about bankruptcy, let's not forget that Eastern Airlines, themselves, testified to the fact that in any situation—I think this was before Judge Pratt's court—that they got into it cost—there is a question of responsibility here—Texas Air over $1 billion for any such filing. Texas Air stockholders are who they are talking about. So you can be talking about a great act of irresponsibility.

People come to us as machinists and say they are asking for $150 million a day. Read the documents and look at our experience. If we were to give them $150 million during the life of that contract, where would it go? It would go right to Continental Airlines, based on what has been happening in the past. Asking Eastern people—mechanics and machinists—to give $150 million so he can upstream it like he has been doing and give it right to Continental and continue the downslide of Eastern Airlines? We don't trust that management.

That is the predicament we are in. That's why the actions were taken. That's what the feelings and sentiment were on the property.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you very much. I think that is a very important point that you made in the latter part of your statement that, indeed, has underscored much of the dispute of the flow of money from Eastern to Continental, and that has, indeed, complicated matters in reaching a settlement.

Mr. PETERPAUL. Thank you, Mr. Chairman.

Mr. OBERSTAR. President Duffy.

TESTIMONY OF CAPT. HENRY DUFFY, PRESIDENT, AIR LINE PILOTS ASSOCIATION

Mr. DUFFY. Thank you, Mr. Chairman.

I, too, will depart from the written statement because w have gotten into part of my testimony with questions and answers, and I don't think anybody could be more eloquent than President Kirkland was on this matter.

We support this legislation because this dispute does have national implications. You can't have watched television over these last three or four days and see the people sitting in the terminals and backlogged and coming off those cruise ships and the coverage that has been focused on this thing without realizing that you simply cannot extract a major carrier—and particularly one so concentrated geographically—from the airline industry without creating great disruption in the shift of passenger flow that takes place.

Second, the National Mediation Board has recommended the Presidential Emergency Board as a solution to this process. We are getting a tremendous amount of doublespeak here from the Secretary.

The Secretary says he is concerned about a congressionally created Emergency Board because it would bypass the Railway Act and the collective bargaining process in the case of the transport workers and the pilots, but there is no such concern generated when it comes to bypassing the recommendations of the National Mediation Board and following through with the Railway Labor Act in creating the Emergency Board. So the Secretary seems to be talking out of both sides of his mouth.

No negotiations are taking place, period. Machinists don't have any. We don't have any. The flight attendants, as far as I am aware, don't have any. If there is going to be a solution here, then we are going to have to have a third party come in and settle this dispute.

What I said earlier in the Q and A is that if there is not a global settlement, this airline simply can't stand any more turmoil. We need a fix to it.

I avoid doomsday scenarios, because I always think there is a chance to pull something out. But I will tell you that it is my belief that if the President maintains his position and refuses to step in then the congressionally created board is not only Eastern's best hope, but I think it may well be its last hope.

Mr. **Oberstar**. Thank you very much, President Duffy. We appreciate your statement.

Your prepared remarks will appear in the record in full.

The Chair would like to call next John Kerrigan, Director of the Air Transport Division of the Transport Workers Union.

TESTIMONY OF JOHN J. KERRIGAN, DIRECTOR, AIR TRANSPORT DIVISION, TRANSPORT WORKERS UNION

Mr. **Kerrigan**. Thank you, Mr. Chairman. And I want to thank you and those Congressmen who held in here until we get done.

I have submitted a rather brief statement to the panel, and I will let that stand on the record.

But I would like to make a few brief remarks in addition to that.

One, I have listened here all day, and I have listened to this debate even before today on the question of why would we have any hope that a presidential fact-finding board would have any more success in resolving this dispute than the National Mediation Board. I think it is important—and I have been through federal mediation, I guess, as much as anyone over the past 40 years. It is important to distinguish the role of the National Mediation Board from that of the fact-finding board that would be set up under this legislation or that should have been set up under the presidential prerogative.

The mediator, through negotiations, tries to get the parties to get together and to work out a dispute. And although they can—and they have on some occasions over the years—make recommendations on how to resolve that dispute, as far as I know the Mediation Board, throughout this 17 months dispute, has not made a mediator's recommendation to the parties, although they could have done that.

I think that if the Presidential Emergency Board is established, part of that process is that that board will weigh the arguments and the issues on both sides and make a recommendation. And although the recommendation isn't binding, I think there will be great pressure on both this employer and on the union to accept that recommendation. And I think that is the only way you are going to get a resolve to this dispute. It is not going to come through the current process—or at least not after a long and costly strike.

I would also like to, because although the question wasn't asked of me, it has come up many times, and it came up again today about this question of the flight attendants, who we represent on Eastern Airlines, and ALPA agreeing to concessions back in 1985 at a time when the machinists' union refused.

I think it is important for the record to note the difference in the bargaining positions of the TWU and ALPA in 1985 versus that of the machinists. We had a contract that was open. We went through the section 6, and we were in direct negotiations. The same was true with ALPA.

The IAM agreement had been in negotiation the previous year, and their contract was not open, so we were not in the same situation.

I would also like to point out that during that negotiation a year previous in 1984, the employer, Eastern at the time, told the three unions on the property and the non-union people that the solution to Eastern's resolve and to their viability as an airline depended on a 15 percent wage reduction of all employees, as well as other concessions.

When we made our agreement in 1985 and ALPA made their agreement we agreed to a 20 percent wage reduction—not 15 percent, which had been initially requested. And the non-contract employees of Eastern Airlines all took a 20 percent wage cut. And, in addition to that, many other rule changes that produced additional savings to the carrier.

I say to you that the combined savings of the TWU agreement, the ALPA, and the non-union far exceeded what Eastern said they had to have to survive, and that was one of the things that people were looking at.

The other problem was that from day to day Eastern changed its position so that you didn't know where we were going or what we were going to do, and I was there. I was the chief negotiator in that negotiation.

I want to make one other final point, because I have heard it stated again here today, as I have many times: there is an impression—a general perception—here and in the country, at large, that somehow Eastern Airlines and its unions have been at war for the past 15 years. Nothing could be further from the truth.

As a matter of fact, when Frank Borman took over as the head of Eastern Airlines in the mid-1970s, and on through the rest of the 1970s and up until 1984, I don't know of any chief executive officer in the airline industry that had the support of his employees and his unions as Frank Borman did. There were concessions after concessions negotiated.

As a matter of fact, back in the mid-1970s our membership, over strong objections of the International Union, agreed to the initial wage reduction program of three percent, which Frank said he had to have. That went on through to 1984. In 1984, the three unions jointly agreed to what the company said was the company-saving package of concessions by all three unions.

So there haven't been 15 years of labor strife. There were, out of that 15 years, 12 years of complete cooperation between labor and management on Eastern Airlines. It wasn't until the closing days of the Borman Administration, and then accelerated by the actions of Lorenzo's takeover, that has created this impression that Eastern's unions and Eastern's employees cannot cooperate to save the company. We have got ourselves into a one-way street, and no matter what the unions have been doing, the company has been hell bent to do it their way under all conditions.

Thank you, Mr. Chairman, for your patience.

Mr. **Oberstar**. Thank you very much, Mr. Kerrigan. We appreciate your elaboration on the issue at hand.

Our final panel member is Mr. James Kennedy, Legislative Director for the Railway Labor Executive Association.

TESTIMONY OF JAMES KENNEDY, EXECUTIVE SECRETARY-TREASURER RAIL LABOR EXECUTIVE ASSOCIATION

Mr. **Kennedy**. Thank you very much, Mr. Chairman.

For a couple of reasons—one, that I'd like to see you folks get about your business that you decided to do this afternoon on markup—I will ask that my prepared statement be submitted into the record.

Mr. **Oberstar**. It will be submitted into the record at the conclusion of your oral remarks.

Mr. **Kennedy**. I will try to summarize, and I will make an extraordinary effort to make sure that my summary isn't longer than my prepared statement.

The RLEA, which represents the 16 railroad unions that represent virtually all railroad employees in this country, 14 of which are in Mr. Kirkland's organization, the AFL–CIO, 2 of which are also represented at this table. We are in total support of this proposed legislation to ensure the appointment of a Presidential Emergency Board, and we want to make sure we indicate our total support for the machinists and our sister and brothers in the airline industry in their struggle.

The Railway Labor Act, much more so than the National Labor Relations Act, is designed to preserve industrial peace by its long—and, as the Supreme Court has characterized it, almost interminable—bargaining process. A very key element in the interminable process is the Presidential Emergency Board.

When the National Mediation Board perceives a threat—just a threat—of deprivation of essential transportation service to a section of the country, it recommends to the President that he create a board to investigate and report within 30 days. During that 30 days, and for 30 days thereafter, neither party to the dispute can engage in economic self-help.

The report of the board is not a confidential report to the President, but a public report, and was designed, in the words of its authors and their testimony before Congress "To exert public pressure on the parties to resolve their dispute." Indeed, one of the purposes to section 10 quoted by the Supreme Court in resolving a dispute as to what constituted the status quo under section 10 is, "To give the government full opportunity to adjust the controversy."

If the report does not achieve that desired result within 30 days, then and only then can the parties engage in self-help. If that is about to occur, the Congress could then decide whether to enact legislation in forcing the report or to take other legislative action.

As I mentioned, the basic tenet of the Railway Labor Act is to preserve industrial peace and avoid disruptions to Commerce by the exercise of economic self help.

This administration apparently does not agree with those Congressional objectives in the rail and airline industry, and it certainly disagrees with the Supreme Court's confirmation of secondary picketing as being in furtherance of those objectives. When in upholding secondary picketing, it concluded that, "The availability of such self-help measures as secondary picketing may increase the effectiveness of the Railway Labor Act in settling major disputes by creating an incentive for the parties to settle prior to exhaustion of the statutory procedures."

During the 55 years of its existence, the National Mediation Board has recommended the creation of a Presidential Emergency Board on more than 200 occasions. Only twice have presidents rejected those recommendations. In 1987, President Reagan rejected a recommendation in a threatened strike involving the Maine Central—Boston to Maine—Portland Terminal Railroads, despite requests from every element of the industry and the public, generally, except, of course, the struck carriers, which were under the common ownership of Guilford Transportation which, in turn, is owned by Timothy Mellon. If it sounds a little bit like Frank Lorenzo, it certainly does to us.

After some four weeks of strike, turmoil, and disruption throughout New England, the Supreme Court issued its decision in the Burlington Northern case involving an entirely different dispute.

In that decision, it unanimously held striking employees to have the legal right to picket secondary employers. Faced with the threat of the exercise of that legal right, President Reagan finally appointed a board which made its recommendations.

When the dispute continued for another 30 days without resolution, Congress enacted the recommendations into law.

During the period President Reagan had rejected the Mediation Board's recommendation, enormous damage was done to the economy of New England and the lives of railroad employees, from which recovery is not yet complete.

The second president in history to reject a Mediation Board's recommendation—and after only 41 days in office—is President Bush.

No one challenges the fact that, given the clear legal rights of the parties to the IAM/Eastern dispute a section 10 statutory threat, a national emergency, exists. However, Secretary Skinner has announced that the President will seek to have Congress eliminate that threat, not by appointing a board, but by depriving employees of their legal rights if the employees attempt to exercise them.

Of course, the President is fully able to remove the threat by appointing a board, but, according to Secretary Skinner, the proper response is that the government should not intervene in this labor dispute so that—and I quote from his March 3 press conference—"The negotiations between Eastern and its labor unions can go unfettered." Yet, in the very next breath, he says, "The negotiations during the 60-day no self-help period would be fruitless given the fact that this has gone on for 17 months and the unions and management are so far apart right now there is no reasonably foreseeable result in 60 days that is going to be much different than what we have today."

If the Secretary really believes that—and I'm sure he does—how does he think this dispute will be settled by allowing the negotiations to go forth unfettered?

Unfortunately, rail labor perceives the administration's idea for settlement in these circumstances as a union broken by a lost strike and/or a bankrupt carrier disavowing its union contracts. Such a conclusion can result only in great public harm, harm to the struck carrier, and harm to its employees, and it is clearly contrary to the spirit and purpose of the Railway Labor Act.

The administration believes section 10 of the Railway Labor Act, despite its very successful 55-year-old history in preventing disruption to commerce, to constitute government intervention, but views legislation which would eliminate existing legal rights not to be government interference. We disagree.

Such a position is not only patently contrary to the fact, but simply illogical. Rail labor does not believe the Rail Labor Act is perfect, by any means. We would very much like to see improvements in the act. But we are realistic, as is rail management which I'm sure has its own laundry list of what it considers to be improvements in the act.

We have no desire to open a door through which evil, as well as good, may enter; however, it certainly will come as no surprise to any member of this committee or the Congress that if that door is opened by others, Rail Labor will seek to protect and improve the interests of the employees it represents to the utmost of its ability.

Thank you very much.

Mr. OBERSTAR. Thank you, Mr. Kennedy.

The issue joined here today is that of whether a further step in this process, as envisioned under the Railway Labor Act, the establishment of a Presidential Emergency Board, will bring about a resolution of this dispute or whether we will simply add 60 more days, $60 million more of losses for Eastern, or whether it will establish a process and a framework within which a resolution can be reached. That is the question before us that I would like to have Mr. Peterpaul address, and then Captain Duffy.

At the end of the process of a findings, conclusions and recommendations by a Presidential Emergency Board, what will be the readiness and willingness of the principal parties involved to accept—first of all, for the machinists to accept the recommendations of this board?

Mr. PETERPAUL. Well, Mr. Chairman, let me just say this: we are here before you to bring high visibility in asking you for an Emergency Board. I am reluctant to sit here and say I'll sign on, because it's like giving someone a blank check. We don't even know who the members of the Emergency Board would be.

Let me just say this: by some of our experiences with this Administration, they are liable to be three ex officios of Texas Air. So we are very skeptical of something like that. But certainly with the high visibility I think we'd be put in a posture where we'd have to give it serious consideration, and I don't think we could turn our backs to it.

Mr. OBERSTAR. The statement has been made by previous witnesses, Captain Duffy, Mr. Kennedy, and Mr. Kerrigan, that the legislation we have introduced, which is the subject of this hearing, would preempt the bargaining rights of the other parties and that we should be taking those interests and rights into consideration.

Do you have any objection to being included in the legislation as it is presently pending?

Mr. KERRIGAN. Mr. Chairman, TWU has no objection to being included into that legislation.

I would like to point out that there has not been a great deal of—well, there hasn't been any presidential fact-finding since 1966. But prior to 1966 there were many presidential fact-finding hearings, and I participated in many of them on PanAm, American, and other airlines.

I think the record should show that in almost every case, if not every case, over the years the recommendations of the fact finders in those hearings lead to agreements between the parties.

Mr. OBERSTAR. Captain Duffy.

Mr. DUFFY. Mr. Chairman, I stated earlier that the Air Line Pilots Association thinks that a board and a global solution is the only fix to Eastern Airlines.

I think that the public spotlight that would be put on both the management and the unions in this case would force the decision. But, again, ALPA would bind itself to the decision. We would feel that the Congress would ensure that we would get a fair panel, that there would be careful oversight of the selection of that panel; therefore, we would bind ourselves to it.

Mr. OBERSTAR. Thank you.

In the ordinary course of events, a 60-day period of time for the entire process to run is customary. Would you consider a lesser period of time to be adequate for fact finding, for conclusions, recommendations, and response by the involved parties, Mr. Peterpaul?

Mr. PETERPAUL. I'd take whatever you gave me, Mr. Chairman, quite candidly.

I mentioned earlier that I think that the process was built so these are maximum amounts of time. I think the second period of time really is within the judgment, as I read the law, of the President. So I would rely on the judgment of others to tinker with that rather than me.

Let me say this: if somebody told me there was a hearing tomorrow, the Emergency Board process is going to transpire and you have to testify, we'll be there full force with all the materials we need to justify what our position is in collective bargaining before that board. No question about it.

So whatever is expedient, we would accept. But, as I mentioned earlier, the 30 days really is the outer limits. A board could expeditiously do that in a shorter period of time if they so desire, and that would accelerate the clock and then go into another 30 days.

Mr. OBERSTAR. It seems to me that a lesser period of time would be appropriate here because this is not a new issue. It hasn't just popped up overnight. It is one that has been on the table for well over a year. The issues are known. The positions of the parties have been well formulated and documented by many presentations, and some lesser period of time would certainly be appropriate to resolve the issue.

Mr. PETERPAUL. There are so many documents available, Mr. Chairman, with all the litigation that has been going on between the three labor organizations sitting here at the table and Eastern

Airlines that those documents are readily available. It is just a question of how to categorize them and which of the hundreds of boxes to take them out of.

Mr. **Oberstar**. The argument has been made, also, that the additional period of time, the 60 days, is just an additional 60 days for Eastern to lose money. But are they losing money now with the strike underway?

The understanding I have is that they were losing $1 million a day prior to this, if I am correct.

But now that there is a strike, and they are attempting to operate. There are still some costs to the company. Of course, I'll ask this question of the company later, but I assume that there is some loss even during the continuation of the strike.

Mr. **Peterpaul**. I would assume there is loss—it is estimated anywhere from $6 million to $7 million. But also, in conjunction with that, like I heard on the radio on the way over here this morning, Mr. Chairman, they have got a strike fund that will take care of them, minus any sale of the shuttle or any transactions that could generate new revenues. They've got a strike fund that will enable them to continue for 50 days.

Mr. **Duffy**. Mr. Chairman, may I just add to that?

Mr. **Oberstar**. Yes.

Mr. **Duffy**. We have been listening to the company spokesmen in their twice-a-day briefings stand up and say bankruptcy is not imminent, we have plenty of money to ride this out. To me, the most hollow argument that has been made against the Presidential Emergency Board is that it would only run the company out of money. Certainly a successful strike puts more economic pressure on the company than any status quo conditions, and so we think that kind of argument just does not hold water.

But we agree that the time period should and could be shortened in any congressionally created board.

Mr. **Oberstar**. Thank you.

Mr. **Peterpaul**. With the working force there, Mr. Chairman, they are losing $1 million; without it there, they are losing $7 million. So I don't see where it expedites their going out of business.

Mr. **Kerrigan**. Mr. Chairman, just let me add to that.

Prior to the strike, the company claimed the losses were because the cost of running the airline was greater than the revenue coming in. Now that they have a strike, the cost of running an airline is greatly diminished; however, they have lost all of their revenues, and so they have to be losing more money now than they were losing before.

Mr. **Oberstar**. Thank you.

One final question, and that is: Should a Presidential Emergency Board be established and the process run its course and the parties not accept that recommendation, there is still the possibility that Congress, as in other cases, could adopt legislation and send it to the President for his signature to enact, by law, the recommendations of the Presidential Emergency Board. In such circumstances, the law has traditionally provided that the parties can agree to anything in writing that they choose to do.

Following enactment of that legislation, the language traditionally reads, "Except that nothing in this joint resolution shall prevent a mutual written agreement to any terms and conditions different from those established by this joint resolution." That provides, again, for the collective bargaining process to go further, but it means that a resolution is in place.

A settlement is enacted by law, and if the parties want to agree to something else, that's up to them, but such agreement is not foreclosed.

Do you find anything objectionable in that language?

Mr. PETERPAUL. I think, Mr. Chairman, that same type of language has been contained in all the legislation that applied to the collective bargaining process as the ultimate result when it had an emergency effect, like we consider here, and that we would not be objectionable to that type of language in any resolution.

Mr. DUFFY. Same here, Mr. Chairman.

Mr. KERRIGAN. We would have no objection to that, and I'd just like to add that I think without that—I said it before, but I just want to say it again—without the threat of somebody making that settlement, or at least making a recommendation of what that settlement would, this strike will go on for a long, long time without resolution.

Mr. OBERSTAR. Furthermore, there is nothing to preclude the parties coming to an agreement while the Presidential Emergency Board is, in fact, meeting. So the collective bargaining process can be jump started at any time after the board is convened.

Mr. PETERPAUL. And all the parties have publicly stated their availability to meet and do everything within their power to bring this to a conclusion, Mr. Chairman.

Mr. DUFFY. Mr. Chairman, I've never done this at a hearing before, but we have a teleconference for our pilots that is originating from Miami early this evening, and I would request that I be excused. We have had an airplane sitting and waiting. They probably could do without me, quite frankly, but the MC for the teleconference is also on the airplane, and it just won't go without him. We need to——

Mr. OBERSTAR. I'm sorry I didn't know that earlier. Everyone has been constrained today except the two leadership members here that have to sit through all of this. [Laughter.]

Do any other members have a question of Captain Duffy briefly before he must leave?

Mr. MCEWEN. Mr. Chairman, I do.

If I could ask it in 60 seconds, Captain Duffy, could you help me? If we go to a secondary boycott, what is the position of the Air Line Pilots Association? Would they cross the picket line?

Mr. DUFFY. Would we cross the picket line? No, sir.

Mr. MCEWEN. So a secondary boycott on——

Mr. DUFFY. What we are engaged in on the Eastern property is a sympathy strike with the machinists, as opposed to secondary boycotts on other properties.

Mr. MCEWEN. In my 30 seconds remaining, in your previous experience, having the transport workers and airline pilots having come to agreement with Eastern, and at the point of signing the contract the machinists refused to at that point, both in 1983 and in 1986. Assuming the Emergency Board made a recommendation with which you felt you could live, what is your expectation of the position of the machinists? Do you think they would agree to the recommendation of the Emergency Board?

Mr. DUFFY. The machinists are right here. I think they have been very forthcoming in saying we need a global solution, we need a third-party solution. I think any union, as well as this management, would be hard put not to abide by the recommendations of the board.

Mr. OBERSTAR. Thank you.

Captain Duffy, we will hold you excused.

The Chair will recognize the gentleman from Georgia, with apologies for taking additional time, but I felt it important to get these very fundamental legislative questions answered and on the record.

Mr. GINGRICH. I want to thank you for being here, Captain Duffy. I'm sure we will be talking again in the near future. Good luck on your trip to Miami.

I appreciate the other members of the panel being here, and I guess I want to pursue a couple of areas that I think need to be explored in a little bit more detail.

First of all, we have heard a number of very strong descriptions of the Lorenzo approach to management negotiations with unions. But it leaves me puzzled, because given the intensity of your feeling that there have been no serious negotiations, that Eastern management has not been responsive, etc., why would a non-mandatory Presidential board get you any further down the road? Why wouldn't, in fact, at the end of that report the Eastern management simply shrug it off, just as you have described them shrugging everything else off?

Mr. PETERPAUL. I think it is obvious public perception and high visibility. This is not a private document some place, Congressman; this is a public forum, and all the people would know just about what has transpired.

I think, as we have stated, the collective bargaining process, even though we firmly believe in it, we feel it has gotten a little stagnated here, especially with an employer that hasn't changed their position in 17 months.

Part of the process—and, of course, with the act and one of the other things available to us—is to give it visibility for these outside pressures. We are hopeful that will do it.

Mr. GINGRICH. If that doesn't do it, Mr. Peterpaul, are you likely to then be back to the Congress asking us to make it mandatory?

Mr. PETERPAUL. I think what the chairman just recently said—I don't know if I would have much opportunity to do that with the joint resolutions that are already being talked about.

As I think I mentioned earlier when the question was asked to me about any mandatory thing, we would be very reluctant to do anything at this particular time about mandatory things. We don't know who the members of the panel are. And, like I said, it is like giving somebody a blank check to write a panel and say go out and legislate this or mandate this for these 28,000 people, because you're talking about all three labor organizations on Eastern Airlines. We'd be reluctant to do that. Hopefully the public pressure will do that for all the parties involved.

Mr. GINGRICH. But it is fair to say that the resolution, as drafted, would, in effect, preempt negotiations for the pilots and for the flight attendants and would be going directly to some kind of government-mandated solution, or at least government-recommended solution?

Mr. PETERPAUL. Government-recommended solution. Yes.

Mr. GINGRICH. And you're not particularly disturbed by the government preempting that?

Mr. PETERPAUL. No, because it is our dispute today—and there is one reason, other than brotherhood and sisterhood—I should say there are several reasons. Those people are out there honoring the machinists picket line for a reason, the torture chamber exists. They are there because they know it is our turn today, their turn tomorrow. And they want to bring it to a conclusion as readily as possible. That's why they feel they should be included; otherwise, we're going to have incident upon incident upon incident. So let's get it over with all at once.

Mr. GINGRICH. Does anyone else want to comment on whether or not you are likely to come back and ask us to make it mandatory?

Mr. KERRIGAN. That we would come back and request it? I don't know that we have discussed that or considered it. But one other thing, as far as the transport workers and the flight attendants are concerned, it has been the company's position for the past year that they have no intention of negotiating with us until they resolve this dispute with the pilots. We have been unable to negotiate. We are ready and available to negotiate, and any forum that will bring that about we are all for.

Mr. GINGRICH. Mr. Kerrigan, you mentioned earlier that it was your assessment that there were basically pretty good labor/management relations up until about 1984. Let me just read into the record a couple of quotes, because I think—and I have been fairly blunt about my assessment of Mr. Lorenzo's style, but I think, frankly, that Mr. Bryant and the machinists have been a clear part of this.

January 28, 1980, Mr. Bryant stated: "The fact that Eastern Airlines has resorted to illegal gangsterism in their labor relations policy—" he cites examples of "illegal terrorism." He says, "We will not let the company trap us with their criminal labor relationship techniques." He says, "The Gestapo tactics of Martin Ludwig Borman and his Nazi scorched earth policy will not work with this union leadership." This is 1980 and it involves Frank Borman.

Is that your idea of good labor/management relations?

Mr. KERRIGAN. There are all kinds of ways to operate in collective bargaining, and there are those on our side in various unions—including some of my own—who think one way to negotiate is to make all kinds of statements to the press in negotiations. Whether that is good or bad, I don't know. I don't engage in that, myself, but I think you have to judge that not by the rhetoric in the newspaper or on the TV, but on the record.

What I say to you is that throughout the 1970s and in 1980 and in 1983 these unions, including the IAM, sat down with management regardless of what they said of each other and reached collective bargaining agreements that were very favorable to the employer and Eastern Airlines that was in the interest of the airlines and their membership, and they did that right up until 1984.

Mr. PETERPAUL. If I may, Mr. Gingrich?

Mr. GINGRICH. Yes.

Mr. PETERPAUL. You have characterized the relationship between the machinists' union and Eastern over that period of time, pre-Frank Lorenzo, as being something in the negative. Let me give you a little bit of a surprise, irrespective of what is printed, because I constantly hear of Frank Borman and Charles Bryan.

I think that during that period of time our relationship with that carrier was probably as good as with any other carrier we represented. Maybe there were some little personality conflicts. I think factually between the two of them—and both of them would probably punch me in the eye for saying this—maybe it was a love/hate relationship they had between the two of them, but that's neither here nor there.

The relationship institutionally was, overall, very good between us. We made a lot of accomplishments during that period of time, during that wage investment program, under Frank Borman.

The employees just from the machinists' union made a five percent contribution in productivity—not wages. Wages you can take out of your pocket and give—in productivity to that carrier, the equivalent of five percent. That told you a little bit about the relationship and what was going on.

I think some of the press is just not properly reporting the way it was. I hope I have characterized the relationship between them as pretty decent, though.

Mr. GINGRICH. Mr. Peterpaul, since you mentioned that, I was going to quote you and get your reaction to three quotes from "Countdown," an autobiography by Frank Borman. On page 391 you happen to show up.

Mr. PETERPAUL. I haven't read that.

Mr. GINGRICH. Well, I'm going to just read you the pertinent passage.

Mr. PETERPAUL. Okay.

Mr. GINGRICH. This is 1983. He says:

> The last minute negotiations were still going on in Washington on March 23 with the strike deadline set for midnight. I flew to the capital and walked into John Peterpaul's office at the IAM's national headquarters. "John," I said, "your union is going to destroy our airline." "There is nothing I can do," he insisted, "I don't control Bryant." "Then what is it going to take to settle this?" "What's on the table?" he replied coldly.
>
> I stood up, "Okay, John, but I want you to know whatever we give you are going to have to give back." Peterpaul allowed himself a slight smile. "All right," he said, "we will work with you if it comes to that."
>
> I found our negotiators and told them school was out, go ahead and settle. That same night I flew back to Miami as depressed as I have ever been in my life. I felt I had let down some 28,000 loyal employees, and I rightly feared the consequences.
>
> I had no sooner arrived home and started talking disconsolately to Susan when a female reporter from a Miami television station rang the door bell. "Colonel," she asked, "What happened?" "We were raped," I said bitterly, and closed the door.

This is the good relationship that the machinists had with Frank Borman?

Mr. PETERPAUL. Let me tell you something. Whatever comment he made there is completely out of text because during the course of that meeting I told him one thing, that anything that Eastern

Airlines, after the period of time of giving by the employees, anything that the employees give from this day forward they will get something in return.

We want to be treated just like all the other creditors in society, whether it be a banker, a vendor, a manufacturer, or anything else. We were tired of give and give and give to Eastern Airlines and Frank Borman and a ten-year stretch had run and it has run its course, and from this point forward—and I made it very, very clear to Frank Borman—that for every dime that was coughed up on the table, something would have to be given in return as far as an asset or something from that carrier. That's where we got in the 1983 wage investment program—which proved to be very successful, by the way, in my opinion, for the first year anyhow.

Mr. GINGRICH. He makes the specific assertion, and I can't find it right this second, that the airline pilots, in fact, were very, very helpful in the effort to gain productivity changes, but that the machinists were specifically not helpful in trying to change productivity behavior and, in fact, blocked the effort to shift productivity. Do you want to comment on that?

Mr. PETERPAUL. I would disagree on that totally. I just mentioned a five percent productivity. All the productivity that we had to give had to be documented in form of savings of man hours and wasn't received. And the airline pilots, when you changed the block times, the productivity is right up front. Whenever we make any changes in productivity they have to be proven before we get credit for them.

We can say we're going to save $100,000 here. Whatever the instrument is has to go in effect. We have to save the $100,000 before we get credit.

I could see that maybe I should have spent a few bucks and bought his book. I just hate to make the contribution to Borman.

Mr. GINGRICH. Let me put one last thing on the record, Mr. Chairman. I want to get the comment of Mr. Peterpaul.

He goes on to say, on page 399, of Mr. Usery, who they brought in as a mediator and consultant:

> Usery proposed to the three unions that an outstanding, totally impartial firm look at the airlines' books and recommended Lazard Freres for the special, unprecedented audit.
>
> ALPA and the TWU agreed, but Charlie Bryan balked, insisting that Locker Abrecht, the accounting firm the IAM was using, do the audit.
>
> Usery solved this latest impasse by suggesting that both firms be hired, so the company ended up paying for two audits. The accountants quickly came up with identical verdicts: Eastern was in a deep hole, and only the unions had the shovels to bring the airline out.
>
> The Lazard Freres report was more detailed. It went beyond confirming near bankruptcy alarms by outlining specific measures that must be taken, both immediately and over the long term.

And, in fact, the only point I'm making—which is a point made by the "Miami Herald" on January 12, and a point made by the "Atlanta Constitution" more recently on February 27, and a point made by the "New York Times" on February 24, and a point made by the "Wall Street Journal" on February 27, and a point made by the "Washington Post" on March 7, is that there has been a very long, slow decay of Eastern Airlines.

I think Mr. Lorenzo has a lot of things that are wrong with his style and with his approach, and I am not a fan of Lorenzo's, but isn't it fair to say that the long decay of Eastern Airlines, in fact, is a situation which is unlikely to be resolved overnight by some magic government panel, and that you would almost certainly be back here asking us to pass a law to make it mandatory, and you are, in effect, asking the government to solve something which predates Lorenzo and which goes to the core of union/management relations at Eastern?

Mr. PETERPAUL. I'm sorry, Congressman. I'm not that type of a magician. Basically I'm a trade unionist. I credit myself with negotiating a lot of contracts during my 25 years as an officer in this labor movement. By nature I am an optimist. When it comes to collective bargaining I think you can open up your gullet and swallow a basketball if it is part of the settlement. I always look towards collective bargaining, legislation, anything I do with an optimistic viewpoint.

I still believe, even though I can sit before you and say I'm very reluctant because of what has transpired in the process of collective bargaining, that I think it is a remote chance that a collective bargaining agreement can be gotten with this management without some high visibility. But I still sit here, and when I go back to my office I still wonder if maybe the phone won't ring and maybe on the other end there will be a Frank Lorenzo asking to sit down and try to iron this thing out because there are 28,000 lives at stake. It is remote, but I still believe that way.

So I can't compare any comments you made. Just stop and think about the employees. Think about the billion and a half they gave, Congressman. This has been a long struggle. Would they jeopardize that $260 million that we got in 1983? Would they jeopardize that trust of theirs if this fellow goes into some type of liquidation which could jeopardize that? Would they do that to themselves if they didn't have actually to feel like they were so tormented and had so much at stake here? These people have been brutalized. That's why there is the solidarity there is. They have been brutalized—there is no other word for it—for a two-year period.

They've had enough. I think, when I look at the Congress and the panel here, there has got to be some type of response to these people. Look at what they are sacrificing. Somebody has got to sacrifice with them. And I think it should come from the Congress. They're not asking you for much—an emergency panel.

Skinner prefers a bankruptcy. I am flabbergasted with that. He sat here and says he prefers a bankruptcy and they want an emergency panel. They send us here for an emergency panel. My god, what is the country coming to when we've got these money merchants running around like this pulling this type of thing.

Mr. OBERSTAR. The gentleman's time has expired.

Mr. GINGRICH. If I might just ask the chairman for a question, I think it is a little unfair to characterize that the Secretary of Transportation is urging or hoping for a bankruptcy.

Mr. PETERPAUL. He said that was one of the options this morning, Congressman. I'm sorry.

Mr. GINGRICH. It is only one of the options, under any circumstance.

Mr. PETERPAUL. I read him in the paper. He put in a news release. Somebody was mentioning that maybe Skinner should inject himself into the bargaining process. He has already committed himself. He said on TV the other day that the workers should get 50 to 60 percent of their wages.

Don't send this fellow into our bargaining. We want a level playing field. He said on TV that the workers should get 50 to 60 percent of their wages, and somebody made reference to us going into bargaining with him? My god, to sit there as an uninterested party to use influence? I get a little hung up on that.

Mr. OBERSTAR. I think it is fair to characterize the Secretary's statement as saying that wages and conditions were 50 to 60 percent of the problem, rather than that they should give 50 to 60 percent.

Mr. PETERPAUL. I apologize, but I still prefer my characterizations, Mr. Chairman. [Laughter.]

Mr. OBERSTAR. The gentleman from California, Mr. Bosco.

Mr. BOSCO. No questions.

Mr. OBERSTAR. The gentleman from North Carolina, Mr. Valentine.

Mr. VALENTINE. No questions.

Mr. OBERSTAR. The gentleman from Ohio.

Mr. MCEWEN. Thank you, Mr. Chairman.

As Mr. Gingrich has made reference, and as that great philosopher, Yogi Berra, said, "This looks like deja vu all over again." Having been there in 1983 and having been there in 1986, if we now go ahead and force this through there is a reluctance on the part of some members of this panel to pursue that, namely the President.

What if, in the course of pursuing an Emergency Board, rather than forcing the company to operate as it has for 17 months, there were an additional effort to reach a compromise? For example, Eastern's last best offer with which they claim they can operate? What if that were to be the mediating period for a set number of days?

Mr. PETERPAUL. That's the 1987 original proposal. Our people rejected that. They rejected that outright by 90-some percent, and 97 percent voted to strike. That's telling the employees, "Listen, there is no level playing ground. We're going to take $150 million from you, all these work rules, and everything else, until this thing comes to some public view."

Mr. MCEWEN. All right. If there is no give, then that's where we're going to go.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you.

The gentlewoman from New York.

Ms. SLAUGHTER. Just one question, Mr. Chairman.

I wonder if any one of you would give me an assessment on the safety of Eastern Airlines today?

Mr. PETERPAUL. I heard the Secretary say it was being investigated. I can only make reference to our particular point. I think in my documentation I made some questions to safety.

Just this past week I know up in Kennedy Airport the FAA conducted some type of emergency hearings and subpoenaed some of our maintenance people to appear before them and supply depositions documents which they did present to the FAA depositions which they do have in their possession.

Without making any condemnation or anything of the carrier, we are tremendously concerned about what is happening, especially with the lack of qualified maintenance people there on the property who could be doing the work. We don't have the visibility to see that, but we know by past performance—and I'm not talking about during the strike. We saw what happened pre-strike.

During the testimony they had up in Kennedy the FAA learned of a certain supervisor signing off maintenance on aircraft that was not performed. That was pre-strike. Now we're into the strike. I couldn't comment. We don't see it.

From that hearing I'm talking to you about, we got depositions and everything from the people they interviewed, but that is also part of the FAA record. They have that on document and on file. That just happened last week prior to this strike up at Kennedy Airport.

They subpoenaed three of our lead mechanics who oversee the mechanical operation on behalf of our organization for representation. This is what they found and this is what they testified to. And if you review and ask the FAA for those documents, Congressman, I think you'd be shocked and maybe a little scared. But I'd prefer not to do it publicly. I don't want to be an alarmist.

Mr. KERRIGAN. We at TWU don't have any documentation or specific information at the moment regarding the safety of those few flights that are flying. I would just say, from my observations over the years, I, personally, would be concerned of the safety on an airline that is operating during a labor dispute.

Mr. OBERSTAR. No further questions?

Ms. SLAUGHTER. No, sir.

Mr. OBERSTAR. The gentleman from New York, Mr. Boehlert?

Mr. BOEHLERT. Mr. Peterpaul, if you don't get what you want at the Emergency Board and the impasse continues—and we know under the ideal conditions Eastern was losing $1 million a day, and now it is more—how long do you think Eastern would survive before being required to file chapter 11? And what would be the consequences of that action?

Mr. PETERPAUL. I think earlier somebody made reference—it may have been myself—that they had a strike fund of roughly $300 million and they were spending $6 million to $7 million a day—I think these are comments they are making that were getting in the press—and they could hold up for about 50 days or so.

Mr. BOEHLERT. For 15 days?

Mr. PETERPAUL. No, 50.

Mr. BOEHLERT. Fifty?

Mr. PETERPAUL. Fifty days or so. And this is not taken into consideration because, I think as Captain Duffy mentioned, it was obvious that the operation they are trying to keep intact is the shuttle to show that it is a saleable item, because you're talking about generating $365 million more in cash if that transaction ever transpires, which would be that much more of a strike fund, maybe, or whatever have you, whatever approach he is taking, Congressman.

Mr. **Boehlert**. Well, if it is 40 or 50 days, if they do file chapter 11, that will be the——

Mr. **Peterpaul**. We're scared of that.

Mr. **Boehlert**. What would be the consequences of that action?

Mr. **Peterpaul**. We're nervous about that, Congressman. But we can't control it. That's something that Frank Lorenzo has to do. He's the one that files the chapter 11.

He has to think before he takes that action. They say right now publicly they'll never do it. They testified over in Judge Pratt or Parker's court that if they went into a bankruptcy on Eastern Airlines it would cost Texas Air over $1 billion to Texas Air stockholders. I think somebody from Texas Air—because there are stockholders over on Texas Air, unlike Eastern Airlines where there are no stockholders. There are stockholders over on Texas Air, so I think they have got to sit up and take notice.

I think, as the Secretary of Transportation said earlier today, maybe the creditors are starting to meet with the management of Texas Air, because it is getting into a serious situation when it comes to finances. But that is a judgment that it is his billion dollars that he is jeopardizing from Texas Air's stockholders. That's it.

I think I have said several times that our people are just choking on it. They are so glad to see this thing, as amazing as it may sound—and I'm not talking just about machinists, but about pilots and flight attendants, as well—they're so glad to see this thing come to a head.

Nobody is happy to see a dispute, but they have a sense inside of relief that now they know what their futures are going to be, and it will be very soon that this will be over one way or another. They are relieved about this.

They know what the circumstances are. These people voted and took these actions.

We were very careful, when we talked about a 97 percent strike vote and we approached our people, we made sure we talked to all the people in all of the labor organizations and told them the possibilities, "Here's possibility one, two, three, four, chapter 11, chapter 7, this, and that, and maybe some place in there ultimately a labor contract for the benefit of everybody concerned."

But everything is laid out right in front of them when they make those judgments. And remember, they make those judgments. Somebody out there thinks, for some reason, that we in the labor movement sit here, the officers, and we make all these brilliant determinations and that automatically everybody follows them around on a chain or something. Just the contrary. We are a democratic labor organization. We are controlled by our internal laws and the federal laws. We have a democratic society. The people elect to do these things. The people reject the contract. The people vote to go on strike. They instruct us and we follow their wishes and desires and give them some guidance, but they tell us what to do.

Mr. **Boehlert**. What protection would your membership have under a chapter 11 reorganization?

Mr. **Peterpaul**. What potential?

Mr. **Boehlert**. Protection.

Mr. PETERPAUL. Like all the others we lived through, Congressman, whether it was a Braniff, an Altair—our list goes on and on and on of those that we participated in—there were unsecured creditors at the end of the line some place getting raped with all the other unsecured vendors while the bankers and everybody else stand in the front of the line and get the lion's share of the dough that is left. We don't have much protection. That's why we are always insisting that they've got to revisit the bankruptcy laws for some protection of the people.

The employees are an asset, too. Maybe they are not an asset to Frank Lorenzo. I'm pretty sure when he sees an employee he doesn't see an asset there but a liability. But in the bankruptcy proceedings, when these—and we live through a lot of them, especially in the airlines—these people are very, very volatile in the airlines because the way they move from location to location and the system seniorities and what the rules are. Nobody has ever given any consideration to this being an asset, too.

Boeing supplied an airplane, so they're going to get all their money back. What about this poor stiff here? He is chopped off. He's going to get 60 percent of his pension. He won't get any of his severance allowance he had coming. He won't get any of his benefits. He won't get anything. He is turned loose with nothing, and like in Braniff maybe 60 percent of his pension.

Doesn't anybody consider anybody?

Mr. OBERSTAR. The gentleman's time has expired.

The gentleman from Colorado, Mr. Skaggs?

Mr. SKAGGS. Thank you, Mr. Chairman.

I have a problem that may be peculiar to me. My heart says yes, yes, yes, and my mind at least turns on a caution light.

Mr. PETERPAUL. You understand why I get emotional about this at times then, Congressman.

Mr. SKAGGS. It seems to me the general thrust of the questions and answers that have gone on this morning and this afternoon assume the passage of this bill and its enactment into law and, therefore, the creation of the Emergency Board. That is an outcome that I would like to see and I have written to the President to that effect.

But at this point it seems to me we are engaged in a leap of logic because we are jumping over the critical element of a Presidential signature on this piece of legislation.

Please help me understand how passing this is going to do some good for you, given that reality.

Mr. PETERPAUL. Let me tell you my inner feelings. We can hear the remarks that labor makes about Frank Lorenzo, and I have sat down and met with Mr. Lorenzo on several occasions, and he likes to talk about his heritage, how he grew up in the slums of New York, how he worked—I can assume that some place there is some trace of humanity, maybe not for his workers, but he has to at least think about his public image. These are my own, personal thoughts, now. I have to think that maybe he sits in his castle down in Houston, Texas, when he is making all these judgments.

But somewhere along the line I would agree with a lot of people that have talked about the possibility of some type of stalemate as far as the collective bargaining process is concerned. But what is next? What ray of hope is there next? Next is an Emergency Board, public image—make it public so people outside can look at it. Let them help make the judgment before it even gets back to you.

Ultimately I couldn't sit here and say maybe it won't come back to you. It may come back here. Nobody is a magician that can decide that. But look at the process to get there and the public imagery that will be played out.

Mr. SKAGGS. I'm afraid you may have misunderstood my point. Your answer just now assumes that a board has been put into existence. I would like to address the question of the Presidential role that still has to be played on this particular piece of legislation, assuming we pass it. And to further ask your observations on whether presenting a bill to the President, if we choose to do that, could have the counter-productive effect, at this stage, of forcing him to harden his position.

Mr. PETERPAUL. Hopefully not. I wish, as Lane characterizes, we had more influence as labor organizations with the President of the United States. But I think he has got to sit there—and I think I mentioned McClure in my testimony and some of the other people he has got from Texas Air management or something related and the influence he has got from that side. But I look at the influence from our side, too. How does he want the history of labor to read?

I'm not characterizing this as a PATCO situation, but I don't characterize a Skinner as a Drew Lewis, either. But the idea is that there are all these outside forces. There are CEOs. My phone rings continuously, and it is CEOs and people like this that are in charge of large corporations that see the fallout effect of this, what bearing it can have on them. There are so many elements and so many ingredients involved in this that I know for a fact that they are on the horn calling the White House, too, making suggestions. And I am getting a lot of favorable comments from people that I know that traditionally don't sit on my side of the table, but the opposite, that are trying to get the ball rolling that think that this is a reasonable way to approach it and try to get a solution.

So hopefully everything that is going on in this arena—there are so many weapons in our arsenal to accomplish our goal. Every morning I get up and I'm looking at every weapon we have got to achieve what our goals are for our people.

But then in the process, too, we don't want to upset the flying public or anything else. We have got to weigh one against the other.

So every morning and afternoon throughout the day we watch things happening. Hopefully there is going to be some momentum here as we go through this process. Maybe we're talking about secondary boycott or something. It is hard to respond to that. People ask what we are going to do. I don't know what we're going to do. As the dispute moves, things have changed from day to day. Hopefully some of these bridges are going to cross some place and bring us to a satisfactory conclusion. But in the meantime we can only use the process we've got and try to maximize it to do the best job to bring it to a conclusion.

I wish I could answer you more. I don't have the magic marker for it. I don't have the quorum with the President. But I know a lot of people that do have some influence that have had some quorums with him, and hopefully that is going to be enough to turn the tide.

Mr. SKAGGS. Thank you.

Thank you, Mr. Chairman.

Mr. OBERSTAR. The gentleman from North Carolina, Mr. Ballenger?

Mr. BALLENGER. I'll pass.

Mr. OBERSTAR. The gentleman from Georgia, Mr. Jones?

Mr. JONES. Thank you.

Just to pick up on that, then, we are assuming—perhaps we should not assume, but it seems to me we are assuming a Presidential veto here. Are you?

Mr. PETERPAUL. No. Not by any stretch of the imagination. I just hope by the time the process gets to him that there is enough pressure put on that he will sign it. This is an emergency type of situation, and I hope he puts his John Henry on it. By no stretch of the imagination am I approaching that. If I thought that way, Congressman, I'd be wasting my time here.

Mr. JONES. That's right, and we all would. But we are, through this legislation, creating pressure.

Mr. PETERPAUL. I hope so. I'm looking for every avenue I've got, and I'll take any suggestions myself, too.

Mr. JONES. As a comment, I have spent a lot of time with Eastern employees over the years—pilots, machinists, stewardesses—and travelled a lot on Eastern in the past, and it has been a great part of the tradition and fabric of Atlanta, the area where I come from.

What I have sensed in those employees is a tremendous amount of pride in their work and in that company. It seems to me that if that pride is, indeed, shared by the management—by Texas Air, by Mr. Lorenzo—then there is at least some common ground there. I know that pride exists from the employees.

Mr. PETERPAUL. Very much so.

Mr. JONES. The jury is still out, I think, on whether or not that pride exists on the other side of the table.

Thank you, sir.

Mr. OBERSTAR. Thank you.

The gentleman from Oregon, Mr. DeFazio.

Mr. DEFAZIO. I pass.

Mr. OBERSTAR. The gentleman from Texas, Mr. Laughlin?

Mr. LAUGHLIN. I pass.

Mr. OBERSTAR. The gentleman from California, Mr. Mineta?

Mr. MINETA. Thank you very much, Mr. Chairman.

This has been a very aggravating—more frustration, I guess, in not being able to see some kind of agreement coming about, but I can well understand why there isn't one.

Given the nature of this legislation, do you think that there will be talks during the time this is going through the legislative process here in the House, as well as in the other body?

Mr. PETERPAUL. At this particular juncture I would hope—we have made our availability known—all the quorums I am in, the TV and everything else—we are ready and available to meet. We have made that expression to the National Mediation Board that if their desire is in an official capacity to bring them back to the bargaining table, we'll go there. There is no question in our mind. And we're making overtures every place we can to try to bring about a collective bargaining solution.

Mr. MINETA. Some of the opponents to the legislation are saying that if we pass it, it really prolongs it that much further. So I think somehow we have to answer that charge that is made, then, that if we pass this legislation it will actually further delay negotiations.

Mr. PETERPAUL. I don't buy that, Congressman. I think it is part of the process, and if there is no bargaining going on, start the clock running. It is really not 30 days. It could be 10 days, 5 days, whenever that panel gets done with doing its job and making the report to the president. Thirty days is the outer limit. It could be a shorter period of time.

Mr. MINETA. I was just going to ask that question, Mr. Peterpaul. What about shortening that time period?

Mr. PETERPAUL. That was asked earlier, Congressman, and, as I said, I am available to your whims. I am looking for speedy resolution to the problem. Those are the outer limits. If the board does it faster, the minute they dispose themselves of their responsibility then the next period of time starts.

Mr. MINETA. Very well. Well, having been with you on other fights—and we've got some doozies coming up besides this one, we still have H.R. 145, as you well know.

Mr. PETERPAUL. I well know that one.

Mr. MINETA. My H.R. 145, and we're going to press on that one, as well.

Mr. PETERPAUL. And we sure are appreciative of that, Congressman. That's the livelihood of the people we're talking about. That's a question of safety for the flying public, a question of jobs in America. It is a very, very important subject matter, and I appreciate all your interest that you have shown and that of the other Congressmen. Thank you very much. I'm very appreciative.

Mr. MINETA. We'll work on this one, as well. Thank you very, very much for your leadership.

Thank you, Mr. Chairman.

Mr. OBERSTAR. We thank the gentleman for his eight years of leadership in aviation prior to this particular Congress.

The gentleman from Ohio had a further question he wanted to ask.

Mr. MCEWEN. Thank you, Mr. Chairman.

I'm still groping here to see if we can come to some sort of a accommodation, but just to get a full analysis of the playing field, Mr. Kennedy, these TRO's are expected to not last indefinitely. What is your analysis as to what the rail workers will do when the restraining orders are abandoned?

Mr. KENNEDY. Well, if the restraining orders are abandoned we will do nothing. If the machinists—I'm not trying to be cute—decide to exercise the right that they would then have, which is, I presume, what your question is, because it is not our rights involved here but the right of the machinists to exercise the right of secondary picketing. And if they did exercise that right, I'm confident that our people would respond to it and exercise their right as trade unionists and honor it.

Testimony of AFL-CIO President Lane Kirkland
House Aviation Subcommittee
Eastern Airlines Strike
March 7, 1989

Mr. Chairman, thank you for giving me the opportunity to testify this morning.

I am here today to ask that Congress move swiftly to establish a Railway Labor Act emergency board through legislation to put Eastern Airlines back in the air. This interim measure would permit Eastern employees to serve the public, would maintain those employees' present working conditions, and would authorize the panel to conduct impartial fact-finding and to make recommendations for a settlement of the dispute.

The National Mediation Board recommended the appointment of such a board, but the President refused to heed their expert advice. His refusal forced the workers at Eastern to go on strike and has made the traveling public the losers. It is time for Congress to fill the leadership void the President has created.

I want to make one thing very clear at the outset. The Machinists at Eastern did not seek a strike. The Flight Attendants and the Airline Pilots at Eastern do not seek a confrontation. The AFL-CIO has done everything in its power to secure an honorable settlement without an interruption in transportation service to the public.

Mr. Chairman, no one wanted this strike except Frank Lorenzo.

In 16 months of bargaining with the Machinists, Eastern did not soften any aspect of its unreasonable demands for employee concessions. The company's first alternative proposal was made only two days prior to the strike deadline and that offer was wholly inadequate.

While the Machinists agreed to accept the National Mediation Board's offer of binding arbitration to settle the dispute, Eastern has rejected arbitration.

The employees at Eastern -- the unionized workers, particularly -- want to go back to work. They want to see their company back to financial health. They want once again to provide the public with the outstanding service that made Eastern a great airline in the first place.

Frank Lorenzo says he can't do that without drastically reducing the standard of living of Eastern workers. If you accept that, then how do you explain the profits of other carriers which treat their employees fairly and decently and pay them higher wages than Eastern? How do you explain the sizeable losses at Continental, the carrier with the lowest per-employee labor costs?

It is clear that from the beginning, Frank Lorenzo and Eastern Airlines have had no intention of engaging in good faith collective bargaining, or of reaching a fair and equitable settlement with the Machinists. Mr. Lorenzo's strategy has been to force a strike and to bust the union. And what of the disruption this would cause to essential air service? Frank Lorenzo's answer is simple: "The public be damned."

The labor movement takes no pleasure in watching frustrated air travellers attempt to cope with the consequences of this strike. That is why we have sought to avoid a strike and why we ask the Congress to require the appointment of an emergency board. Beyond that, I can only say to the traveling public that as hard as the strike is for them, it is harder for the employees at Eastern Airlines. Imagine, if you would, being asked to take a yearly pay cut equal to your annual rent or house payments. Take it or leave it. That's what Frank Lorenzo is attempting to force on the Machinists.

By engaging in this strike, the Machinists, along with the pilots and flight attendants who are honoring the picket lines, are risking their careers and their long-term investment in Eastern. For them, literally everything is at stake.

And just what is at stake for Mr. Lorenzo? Well, he has his other airline, which he has bolstered with Eastern's money. He can also continue to sell off Eastern, as he has done in recent months, in various pieces. And I suppose he can continue to play the leveraged buyout and corporate restructuring game -- shifting, stripping, and liquidating assets while he wheels and deals his way to higher profits.

Whatever price is ultimately extracted from thousands of Eastern employees and their families, I'm sure Mr. Lorenzo will do quite alright. No wonder he hasn't shown an interest in good faith bargaining.

The question I bring before the subcommittee today is this: Why should the public suffer widespread inconvenience, as it clearly has in recent days, because of this corporate intransigence?

The Railway Labor Act contains provisions to deal with this type of situation. When, according to the act, a labor dispute "threatens substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service," then the President is empowered to extend the agreements in place and appoint an emergency fact-finding board.

By any measure, the strike at Eastern, by reason of the solidarity and fortitude of Eastern's employees, is not merely threatening to substantially interrupt essential transportation services, IT IS interrupting transportation services. That strike came about because the company never engaged in serious collective bargaining with its employees. If there is to be any such bargaining in the near future, it will come about only if Frank Lorenzo is made publicly accountable.

A high-level, impartial fact-finding board is the tried and tested means toward that end. Thus, the Congress has it within its legislative power to turn the present destructive situation around and start the parties toward a constructive resolution of this dispute. The labor movement asks you to exercise that power now.

STATEMENT OF
JOHN F. PETERPAUL
VICE-PRESIDENT - TRANSPORTATION
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS
BEFORE THE SUBCOMMITTEE ON AVIATION,
COMMITTEE ON PUBLIC WORKS & TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES
MARCH 7, 1989

My name is John F. Peterpaul. I am Vice President for Transportation of the International Association of Machinists and Aerospace Workers (IAM) and have held that elective position since December 1, 1973. The IAM represents approximately 800,000 employees in various industries throughout this nation. At the present time the IAM represents 95,000 mechanics and related employees in the airline industry including 8,500 employees on Eastern Airlines. Prior to Mr. Lorenzo's acquisition of Eastern Airlines in 1986 there were 13,500 IAM members employed by that once proud airline.

I would like to begin my testimony by thanking Chairmen Oberstar and Anderson and all of the members of the committee for providing the IAM with this opportunity to provide the employee side of this tragic story. We believe that the legislation under consideration by this committee may prove to be the salvation of an airline that was captured and exploited for its asset value without any concern for the public interest or the sacrifices of its employees. IAM members have sacrificed to the tune of a billion and a half dollars in concessions in the last decade, only to see them squandered away. (See Attachment A)

The IAM prides itself on its ability to peacefully resolve disputes with employers while achieving fair and equitable wages and working conditions for its members.' However, the IAM has never before confronted an individual so intent on destroying labor unions that he would dismantle and destroy the company to achieve his end.

The IAM regards the strike as the economic weapon of last resort. We can assure this committee and the Congress that we have attempted in good faith to exhaust all of the long and time consuming procedures of the Railway Labor Act. We have even agreed to submit this dispute to arbitration only to have Eastern Airlines reject out of hand the National Mediation Board proposal for binding arbitration of the dispute. Our brothers and sisters were faced with the choice of bowing to human greed and contempt for working people or to risk hardship by going out on strike to preserve their human dignity. Our members and those of our brothers and sisters of ALPA and the TWU have voted with their feet.

From the very day that Texas Air acquired Eastern Airlines in November of 1986, Mr. Lorenzo began to demonstrate a virulent anti-union, anti-worker philosophy that he pursued with religious zeal. Immediately he demanded that the workers slash their wages and benefits by four hundred and eighty million dollars ($480,000,000). He began a reign of industrial terrorism through surveillance, terminations, and layoffs. He purposely caused the grievance procedures to become backlogged to the point of near collapse. Once his regime occupied the airline, terminations increased by approximately 900%, and a backlog of grievances grew to more than 3,600.

Even before beginning negotiations with the IAM Mr. Lorenzo attempted to take the law into his own hands. On June 23, 1987 he notified the IAM that he had created a wholly owned subsidiary of Eastern Airlines to be known as Airport Ground Services Inc. He proposed a transfer of 6,000 of our fleet service employees to this new company in order to divide and conquer our union members. Fortunately, a federal court enjoined him from implementing this plan and found it to be a flagrant violation of the Railway Labor Act.

Once negotiations began, it became clear that by Mr. Lorenzo had no desire whatsoever to reach a collective bargaining agreement. All of the direct negotiations between Eastern and the IAM were conducted on seven days between October 12, 1987 and October 28, 1987. On November 10, with less than 16 hours of negotiations having occurred, Eastern Airlines unilaterally declared an impasse and asked the Mediation Board to terminate all bargaining and to allow Eastern to engage in self help. It was clear that Eastern wanted its IAM members to go out on strike so that it could replace them or subcontract the work that our members have been performing on Eastern Airlines since 1946.

At the same time Eastern was making a sham of the negotiating process, it announced it would terminate 3,500 employees and put 21 aircraft up for sale. This was intended to show the union that unless it capitulated to his demands its members and their families would be made to suffer.

Despite Eastern's declaration of an impasse in October of 1987, the IAM invoked the services of the National Mediation Board to mediate the dispute so that an agreement could be reached without the necessity of a crippling strike. However, at the bargaining table, Eastern officials continued to threaten that unless the IAM agreed to massive wage reductions Eastern would sell off its major assets and sub-contract out bargaining unit work to non-union employers. In fact in February 1988 it attempted to illegally create another subsidiary. This was a thinly veiled effort to transfer the only profitable segment of the airline, the air shuttle, to Texas Air further weakening Eastern Airlines. However, because Mr. Lorenzo's arrogant conduct violated both a court order and the Railway Labor Act Eastern Airlines was held in contempt of court. After an appeal Eastern Airlines represented to the Court that it would not go forward with its plan to sell off the shuttle to a subsidiary.

Earlier in 1988, Eastern again violated the law when it signed a 3-year contract with a company called Orion Air. Eastern claimed that the contract was necessary so that in the event of a strike by the IAM it would have sufficient non-union pilots, flight attendants, and mechanics to operate Eastern aircraft. Again, a federal court found Eastern to be in violation of the Railway Labor Act and again Eastern was enjoined.

Our lawyers uncovered through discovery a Texas Air document that describes how Texas Air would chunk off the various pieces of the airline to shock its unions until they bowed to his demands. Even now Eastern is in the final stages of selling the only profitable part of the airline to Donald Trump. The shuttle is the heart and the life blood of Eastern Airlines. Its sale sends a clear message that Eastern strategy has not been intended to reach a new agreement but instead to liquidate the company without the constraints of a bankruptcy proceeding.

Even when a tentative agreement was reached guaranteeing that IAM represented employees would be utilized at a number of Eastern facilities including Kansas City, Philadelphia, Las Vegas and Minneapolis St. Paul, in June of 1988 he thereafter demonstrated his bad faith by announcing that he would close the Kansas City hub and would end service to fourteen western cities including four covered by the June agreement. Mr. Lorenzo never intended to reach a Collective Bargaining agreement but only intended to appear to go through the motions of bargaining. Eastern engaged in surface bargaining while transferring bargaining unit work and valuable corporate assets to non-union carriers within the Texas Air empire. During 1987 Eastern sold or leased 19 of its aircraft reducing its fleet by nearly 6% to 279 aircraft. Aircraft were transferred or leased to Continental. Thus, while Eastern fleet was shrinking Continental's continued to grow from 206 in December of 1986 to 347 planes in November of 1987.

Even at the eleventh hour Eastern's proposals and conduct demonstrated Eastern contempt for the entire collective bargaining process. During negotiations the IAM offered to make substantial compromises on the most difficult of economic issues. The IAM offered a twelve month wage freeze which it later extended to a fifteen month wage freeze. The IAM offered to accept a 20% wage reduction for newly hired employees. Eastern never responded to these proposals but held fast to its demand that the employees bear its debt burden by further reductions in their standard of living ranging from 20% to 50% per employee.

It is a shocking example of Texas Air's exploitation of Eastern that Eastern is required to pay five hundred thousand dollars ($500,000) a month in management fees to Texas Air in exchange for which Texas Air has mismanaged Eastern into the ground. In April of 1987 Eastern was required to sell its valuable computer reservation systems to Texas Air for less than one half of its estimated value of two hundred sixteen million dollars ($216,000,000). It was financed by an unsecured note in the principle amount of one hundred million dollars ($100,000,000) bearing an interest rate of only 6%. Now Eastern must rent what was once its own computer system for ten million dollars ($10,000,000) a month. In one year alone Eastern has paid more for the system than the total amount of money it received from Texas Air. Eastern has also been required to begin the process of transferring its valuable Latin American routes to non-union Continental. (See Attachments B and C)

On February 1, 1989 the NMB released the parties from mediation and declared the start of the thirty day cooling off period prior to the strike. The NMB proffered binding arbitration to the parties to resolve this dispute. The IAM accepted the offer to avert a strike but Eastern rejected it. The cooling off period expired at 12:01 a.m. on March 4, 1989. The parties are now free to engage in self-help. However on February 24 in an effort to avoid a strike which would cripple the transportation industry the NMB recommended to the President of the United States that he appoint an Emergency Board as provided for by the Railway Labor Act.

The administration has, by their response, abandoned any pretense of neutrality. They have thrown in with Frank Lorenzo. They have made an unholy alliance with a man hell bent on the destruction of its unions even if it means the destruction of the company itself. While Mr. Lorenzo blames Eastern's labor costs for Eastern's deteriorating conditions, Eastern's labor costs fall in the middle of the list of major carriers for labor costs. In fact Eastern lost five hundred seventeen million dollars ($517,000,000) in the two last years while its favored non union sister airline, Continental, with one of the lowest paid workforces in the industry, lost five hundred seventy-three million dollars ($573,000,000) over the same two year period. The Texas Air empire registered $718 million in losses last year.

Since 1934 when the Railway Labor Act was amended to cover airlines the NMB has recommended the creation of Emergency Boards in the airline industry only 34 times. On each occasion every President since Roosevelt, regardless of his party affiliation, has followed this recommendation. President Bush's unprecedented response can only be understood by considering the influence Mr. Lorenzo has purchased in Washington and by those he has placed at the highest levels of government. Indeed there has been a cozy game of musical chairs played by the administration and Texas Air. Mr. Lorenzo has infiltrated the White House itself and placed Frederick McClure, a former Vice President of and lobbyist for Texas Air, as the Assistant for Legislative Affairs to President Bush. It is unlikely that Mr. McClure serving in this position would not have participated in the decision concerning the appointment of an Emergency Board. Indeed it is not surprising that the President's decision favors his former employer. In addition Mr. Lorenzo and his supporters have recruited the former Secretary of Transportation, the former Director of the Public Liaison Office in the Reagan White House, the former chief counsel of the FAA and the former chairman of the Federal Mediation and Conciliation Services. Not since the days of the Pullman Strike has government so blatantly done the bidding of management in a labor dispute. I therefore believe that the only way to level the playing field and bypass the administration's plainly biased and unprecedented decision is to enact this legislation. (See Attachment D)

An Emergency Board is necessary before Mr. Lorenzo out of spite and hatred of unions, obliterates Eastern Air Lines from the air transport industry. He was allowed to pilot Continental into bankruptcy and annihilated the employee's collective bargaining contracts. He then took control of Eastern and that voyage has proved equally damaging to dedicated workers and their families.

Without the intervention of the federal government the demise of the airline and the suffering of thousands of families are certain.

Finally and most importantly last week documentation was presented to the FAA as part of its investigation which has raised serious questions about Eastern's safety. Documents were presented that reveal that foremen, general foremen and maintenance managers have signed log sheets and work sheets indicating that critical maintenance work has been performed that in fact has not been done. Management has fraudulently certified that procedures had been completed that were not performed such as engine checks, the application of a corrosion preventive compound and the lubrication of wing flaps and landing gear. What is particularly frightening about this evidence is that the planes involved are A-300s the same aircraft that Eastern is now using to fly the Shuttle. These examples are not intended as scare tactics but as a genuine concern for the safety of the travelling public. This is not merely a struggle by a labor organization against an employer but is the struggle of all working people against corporate abuse.

We believe that the creation of an Emergency Board represents the last best hope to avoid a nation-wide confrontation between labor and Texas Air management which will have devastating consequences. A legislated Presidential Emergency Board will once and for all objectively determine a reasonable recommended settlement of this dispute for all unionized employees of Eastern. The IAM is firmly convinced that these extraordinary circumstances compel the legislated appointment of an Emergency Board. We urge Congress to do what is required by the public interest and enact H.R. 1231.

ATTACHMENT A

EASTERN EMPLOYEE CONCESSIONS: 1976-1988

1976

AMOUNT	EXPLANATORY NOTES
$32 Million	Employees cost for wage freeze and a wages-for-warrants or profit-sharing arrangement.

1977-1983

AMOUNT	EXPLANATORY NOTES
$417 Million	Net employee cost for concessions including a 3.5% "Variable Earning Program," productivity programs, wage freezes, and net benefit to Eastern of employee purchases of below-market rate debentures.

1984

AMOUNT	EXPLANATORY NOTES
$295 Million	Net employee wage cost for "Wage Investment Program" stock for wages agreement. Includes value of stock received, does not include value of contractually mandated $75 million in productivity improvements from all groups (the IAM alone produced $50 million in management-verified savings during 1984).

1985

AMOUNT	EXPLANATORY NOTES
$90 Million	Net employee wage cost for disputed unilateral continuation of Wage Investment Program and phased restoration of wage levels. Does not include $87 million in management-verified IAM productivity improvements and other cost-saving programs during 1985 which were partially used to "buy back" IAM wages as part of a productivity-for-wages agreement.

1986-1988

AMOUNT	EXPLANATORY NOTES
$691 Million	Includes $625 million in concessions from non-IAM employees and $66 million from IAM employees as the result of the September 1985 agreement to modify the IAM contract to reduce wages by 5%.

$1.525 Billion -- TOTAL EASTERN EMPLOYEE WAGE CONCESSIONS 1976-1988

ATTACHMENT B

THE BLEEDING OF EASTERN AIR LINES

PAYMENTS AND FINANCINGS TO OTHER TEXAS AIR ENTITIES

(amounts in millions of dollars)

PAYMENTS AND FINANCINGS FOR TEXAS AIR CORPORATION

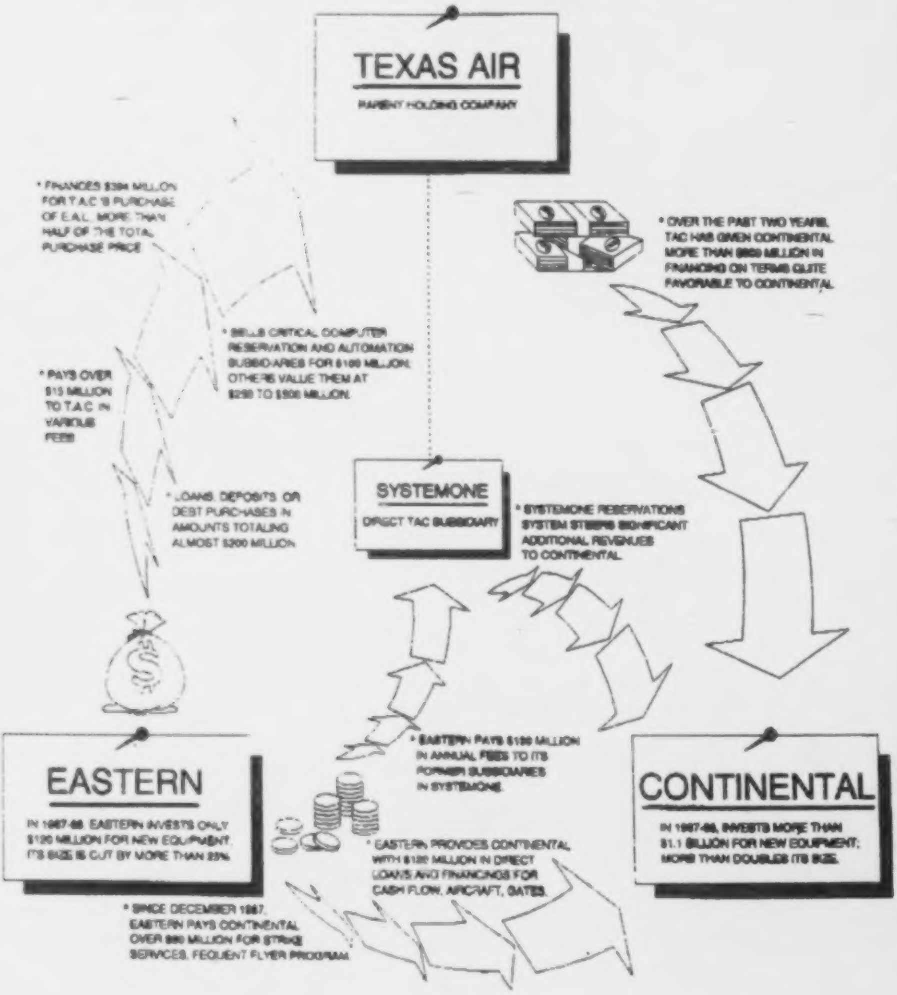
$394.0	Eastern finances more than half of its purchase by Texas Air; includes $230 million in notes issued, $110 million in cash, $34 million loan to TAC, and $20 million inducement fee to TAC
$100.0	Eastern sells its computer reservations and automation subsidiaries to TAC for a $100 million, 6% convertible note due in 2012; these subsidiaries valued by others in $250 million to $500 million range
$44.0	Deposits paid to Texas Air in return for guarantees; includes $40 million deposit in connection with $200 million "strike fund war-chest" junk bond and $4 million for TAC guarantees in connection with the sale of the Shuttle to Donald Trump
$25.0	Eastern purchases People Express note from Texas Air to help finance TAC's acquisition of that carrier
$16.0	Eastern carries $16 million, non-interest bearing receivable from Texas Air in connection with merger expenses; repaid by TAC only after it becomes a major issue in a court case
$12.0	Payments to Texas Air for management fees during 1987 and 1988
$4.8	Payment for "break-up fee" in connection with TAC's failed attempt to purchase the Shuttle in early 1988
$3.4	Annual guarantee fees on the $200 million "strike fund war-chest" junk bond financing (see above)

PAYMENTS AND FINANCINGS FOR OTHER TEXAS AIR SUBSIDIARIES

$130.0	Annual payments to Texas Air's SystemOne Computer Reservations and Automation Subsidiary which Eastern used to own (see above)
$120.0	Eastern loans to Continental -- includes $40 million in a direct loan and $80 million in notes for gates and aircraft Eastern sold to Continental
$41.5	Strike preparation payments to Continental (information available for December 1987 through September 1988 only)
$27.1	Net payments to finance Continental's acquisition of a 50% interest in Bar Harbor Airlines (a commuter airline)
$17.5	Payment to Continental in connection with their joint frequent flyer program, OnePass
$17.0	Fuel purchasing "commission" to new Texas Air subsidiary, TAC Fuel Management (information available for April 1987 to September 1988 only)

ATTACHMENT C

HOW TEXAS AIR USES EASTERN TO FINANCE CONTINENTAL'S GROWTH


TEXAS AIR
PARENT HOLDING COMPANY
SYSTEMONE
DIRECT TAC SUBSIDIARY
EASTERN
IN 1987-88, EASTERN INVESTS ONLY $120 MILLION FOR NEW EQUIPMENT. IT'S SIZE IS CUT BY MORE THAN 25%
CONTINENTAL
IN 1987-88, INVESTS MORE THAN $1.1 BILLION FOR NEW EQUIPMENT; MORE THAN DOUBLES ITS SIZE.

* FINANCES $394 MILLION FOR T.A.C.'S PURCHASE OF E.A.L. MORE THAN HALF OF THE TOTAL PURCHASE PRICE

* SELLS CRITICAL COMPUTER RESERVATION AND AUTOMATION SUBSIDIARIES FOR $100 MILLION; OTHERS VALUE THEM AT $250 TO $500 MILLION.

* PAYS OVER $15 MILLION TO T.A.C. IN VARIOUS FEES

* LOANS, DEPOSITS, OR DEBT PURCHASES IN AMOUNTS TOTALING ALMOST $200 MILLION

* OVER THE PAST TWO YEARS, TAC HAS GIVEN CONTINENTAL MORE THAN $880 MILLION IN FINANCING ON TERMS QUITE FAVORABLE TO CONTINENTAL

* SYSTEMONE RESERVATIONS SYSTEM STEERS SIGNIFICANT ADDITIONAL REVENUES TO CONTINENTAL

* EASTERN PAYS $100 MILLION IN ANNUAL FEES TO ITS FORMER SUBSIDIARIES IN SYSTEMONE

* EASTERN PROVIDES CONTINENTAL WITH $120 MILLION IN DIRECT LOANS AND FINANCINGS FOR CASH FLOW, AIRCRAFT, GATES.

* SINCE DECEMBER 1987, EASTERN PAYS CONTINENTAL OVER $80 MILLION FOR STRIKE SERVICES, FEQUENT FLYER PROGRAM

ATTACHMENT D

LORENZO'S LEGIONS

FORMER GOVERNMENT OFFICIALS WHO SUBSEQUENTLY WORKED FOR FRANK LORENZO

Donald C. Alexander: Former IRS Commissioner under President Ford. Has worked as an EAL lobbyist for Morgan, Lewis & Bockius.

Stanton Anderson: Worked for President Nixon, Deputy Assistant Secretary of State for Presidents Nixon and Ford. Republican Party activist. Lobbies for Texas Air and Eastern. With Anderson, Hibey, Nauheim and Blair.

Philip Bakes: Former Watergate prosecutor, Former chief counsel for CAB. Former President & Director of CAL. President, Chief Executive Officer and Director of Eastern Air Lines since October 1986.

John Barnum: Formerly with DOT (General Counsel 1971-73; Under Secretary 1973-74; Deputy Secretary 1974-77); now with law firm of White & Case in DC; represented TAC before CAB on CAL takeover.

Berl Bernhard: worked with McPherson (see below). Was Finance Chairman of Ernest Hollings 1986 re-election campaign. With law firm of Verner, Liipfert, Bernhard, McPherson and Hand, representing Continental on Single Carrier and other issues.

David Boies: Former Ted Kennedy aide. In 1979 was Chief Counsel of Judiciary Committee in Senate. At Cravath, Swaine & Moore. In 1988 acted as a counsel to Eastern in DOT investigation, downsizing court case and the Shuttle court case.

James Burnley: Former Secretary of Transpotation in Reagan Administration; joined the law firm of Shaw, Pittman, Potts & Trowbridge, which performs legal work for Continental and Eastern.

Joseph A. Califano, Jr.: Former Secretary of Health, Education and Welfare in Carter Administration. At Hughes, Hubbard & Reed. Hired by Eastern to work on Shuttle case.

Calvin Collier: Multiple key former government positions, including Chairman, Federal Trade Commission (1976-1977). With law firm Hughes, Hubbard & Reed. Registered lobbyist. Represents Texas Air.

James C. Corman: Former Democratic congressman from California. With Corman Law Offices, lobbying for Texas and Continental since the early 1980's.

Robert Davis: Former Chief of Staff, Department of Transportation, 1985, under Sec. Elizabeth Dole. Employed as of 1988 as a lobbyist for Eastern by the law firm of Anderson, Hibey, Nauheim and Blair.

Kenneth Feinberg: Former Ted Kennedy aide and special counsel to Judiciary Committee. With law firm Kaye, Scholer, Fierman, Hayes & Handler. Working on various projects.

Richard Hirst: Staff member at CAB working on liberalizing international fares, now working as a Continental lawyer.

Joel Jankowsky: Former legislative assistant to the Speaker of the U.S. House of Representatives (1972-1976). His law firm, Akin, Gump, Strauss, Hauer & Feld, does Eastern labor, legal and lobbying work.Represents Texas Air as a lobbyist.

Mark Johnson: Former aide to Rep. Gephardt. Hired as a Public Relations officials for Texas Air in May 1988. Currently an aide to Rep. Jim Wright, Speaker of the House of Representatives.

Alfred Kahn: Former Chairman of CAB. Former NY Air Director.

Phillip Lacovera: Formerly with Watergate special counsel; now with Hughes, Hubbard & Reed; represents Texas Air.

Jack Leslie: Former Ted Kennedy staff aide. President of advertising firm, Sawyer/Miller Group which handles EAL/CAL advertising and led "damage control' effort on DOT investigation and follow-through.

Michael Levine: Head of CAB's Bureau of Pricing and Domestic Aviation 1977-79; consultant to CAL 1979-81, Exec VP Marketing of CAL 1981-82; President of New York Air 1982-84. Now head of Yale School of Management.

Frederick McClure: Former aide to Senator John Tower. Texas Air Vice President, working as a lobbyist sometime in 1987 and 1988. Now White House Assistant for Legislative Affairs.

Kay McMurray: Former Chairman of the Federal Mediation and Conciliation Services. Now member of Eastern Air Lines Board of Directors.

Harry McPherson: Former aide to L. B. Johnson. Arranges meetings between Lorenzo and staff of Senator Ernest Hollings (D-SC). With law firm of Verner, Liipfert, Bernhard, McPherson and Hand, representing Continental on Single Carrier and other issues.

Clark H. Onstad: Former Chief Counsel, FAA, 1977-81; now a vice president of Texas Air.

Rebecca Range: Former Director of Reagan White House Office of Public Liason. Now Vice-President of Texas Air for government affairs.

Dewey Roark: Former FAA special counsel for regulations. Retained by Continental to write company's rebuttal to FAA 1984 audit.

Judge T. Glover Roberts: Former bankruptcy judge who ruled on Continental's case. Confirmed Continental's reorganization plan on June 30, 1985. Two days later began job negotiations and later joined as a partner the law firm of Sheinfield, Maley & Kay, the law firm which represented Continental in the bankruptcy case.

John Robson: Former Chairman of CAB 1975-77. Continental Director.

Elliot Seiden: Formerly the chief airline antitrust lawyer with the Department of Justice. Joined TAC's legal staff to work on EAstern takeover case.

Robert Strauss: Former Democratic National Committee Chairman. His law firm, Akin, Gump, Strauss, Hauer & Feld, does Eastern labor, legal and lobbying work.

Robert Szabo: Former legislative assistant to Sen. J. Bennett Johnston. His firm, Van Ness, Feldman, Sutcliffe, Curtis, and Levenberg lobbys for Texas Air.

William Van Ness: Former aide to the late Senator Henry Jackson and former special counsel and chief counsel to U.S. Senate Interior and Insullar Affairs Committee. His firm, Van Ness, Feldman, Sutcliffe, Curtis, and Levenberg lobbys for Texas Air.

J.D. Williams: Long-time Democratic fundraiser. His firm, Williams & Jensen, in 1988 lobbyied against House and Senate Resolutions in Congress.

Transport Workers Union of America

Affiliated with American Federation of Labor and Congress of Industrial Organizations

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STATEMENT OF JOHN J. KERRIGAN
DIRECTOR, AIR TRANSPORT DIVISION
TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO
ON THE DISPUTE AT EASTERN AIRLINES

MARCH 7, 1989

Mr. Chairman, my name is John J. Kerrigan and I am here on behalf of the Transport Workers Union of America, AFL-CIO (TWU). TWU represents some fifty thousand working men and women in the airline industry. Obviously, what is of significance here is that we represent the seven thousand flight attendants at Eastern Airlines.

In order for the Committee to understand how Eastern managed to reach this disasterous point in its history, let me give you some background from the perspective of our flight attendants. Back in 1986, the flight attendants agreed to take twenty percent cuts in wages and wage-related items. When we did so we were told by Eastern management that we had done everything necessary to keep the Company viable. The next day Eastern was sold to Texas Air Corporation.

Shortly after the sale of Eastern to Texas Air, I was informed by Management that our contract was no longer valid and that the "new owner" needed yet more concessions. Quite frankly, our people had nothing more to give. Accordingly, after another week of negotiations we agreed to the same contract that we had thought we had entered into prior to the sale of Eastern.

One would have thought that, given the great sacrifice made by flight attendants, the Company would have at least been grateful to them. Until President Bakes' press conference of Sunday, I never heard any such expression of gratitude from management. Instead, in the years since Texas Air took over this Company, our flight attendants have been subject to a continuing drumbeat for more concessions, an upsurge in discipline, and non-stop propaganda concerning the benefits of a "union free" environment. It should come as no surprise to this Committee that when officials for Eastern urge our people to return to work and refer to them as part of the Eastern "family", few have any confidence in their paternalism.

The unfortunate fact is that in the past three years Texas Air has managed to antagonize virtually every class and craft of employees on the property. And, in doing so, they have managed to teach the importance of being protected by a union in ways that no amount of bulletins or seminars from the Union could ever bring home.

This brings me to Secretary of Transportation Skinner's role in this matter. TWU has requested that the administration accept the National Mediation Board's recommendation that a Public Emergency Board review this dispute. Secretary Skinner advised against this recommendation. In fact, he did more than that. Last Sunday on "Meet the Press" he argued Texas Air's case for more concessions from Eastern employees. Mr. Chairman, I have been part of the labor movement for some forty years and part of the airline industry for thirty. I am certain of few things. However, one thing I do know is that I will never live to see the day when a Secretary of Transportation publicly urges a Company to give wage increases and improvements in the way that the Secretary argued for more concessions from our people on Sunday.

Secretary Skinner states that he does not want to intervene in a collective bargaining dispute. This does not prevent him from demanding that Congress pass legislation which prevents other working people in this industry from making common cause with Eastern employees. He states that a widespread strike could undermine our international competitiveness. Yet, this has not prevented his Department from enacting regulations which will cause thousands of well paying maintenance jobs to move overseas, regulations which Texas Air will undoubtedly take full advantage of.

When I hear the Secretary state that he wants the parties to this dispute to be treated equally, I am reminded of a speech made by President Kirkland in which he recounted an observation made by that famous philosopher-Bat Masterson. Mr. Masterson noted that things are pretty much equal in this country. After all, take the matter of ice-the rich get theirs in the summer and the poor get their's in the winter.

The "hands off" approach and so called "equal treatment" urged by the Secretary is of the Bat Masterson variety. It is the dead of winter, we have asked for government assistance in resolving this terrible dispute, and the Secretary has sent us our ice. Come the summer, when it needs regulatory help to finish the job of breaking its unions, you can bet that Texas Air will get all the ice they need.

BEFORE THE
SUBCOMMITTEE ON INVESTIGATIONS & OVERSIGHT
OF THE
COMMITTEE ON PUBLIC WORKERS & TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVESS

MARCH 7, 1989

STATEMENT OF JAMES J. KENNEDY,
EXECUTIVE SECRETARY-TREASURER
RAILWAY LABOR EXECUTIVES' ASSOCIATION

Mr. Chairman & Members of the Committee:

The Railway Labor Executives' Association supports legislation which would ensure the appointment of a Presidential Emergency Board in the IAM-Eastern Airlines dispute and we find it ominously disturbing and most disappointing that such legislation has become necessary less than 45 days into the Bush Administration. In the preceding Administration, air traffic controllers in desperation over their intolerable working conditions struck. They were immediately fired for acting in violation of law and their union destroyed.

This Administration, in office only 41 days, went a step further last Friday, March 3, by informing the working men and women of this country through its newly appointed Secretary of Transportation, that not only would it not prevent the commencement of a strike which would, and indeed has, seriously and unnecessarily inconvenienced the travelling public and which clearly threatens- and I emphasize "threatens"- to deprive sections of this country of essential transportation service; but also informed the IAM-represented employees that if they exercised their legal right to picket secondary employees the Adminsitration would do what it could to strip them of that right.

The Railway Labor Act, much more so than the National Labor Relations Act, is designed to preserve industrial peace by its long--and as the Supreme Court has characterized it--almost "interminable" bargaining processes.

A very key element in that "interminable" process is the Presidential Emergency Board. When the National Mediation Board perceives a "threat" of deprivation of essential transportation service to a section of the country it recommends to the President that he create a Board to investigate and report within 30 days. During that 30 days and for 30 days thereafter, neither party to the dispute can engage in economic self-help.

The Report of the Board is not a confidential report to the President, but a public report and was designed, in the words of its authors in their testimony before Congress, to exert public pressure on the parties to resolve their dispute. Indeed, one of the purposes to Section 10 quoted by the Supreme Court in resolving a dispute as to what constituted the status quo under Section 10 is "to give the Government full opportunity to adjust the controversy." If the report does not achieve that desired result within 30 days, then and only then can the parties engage in self-help. If that is about to occur the Congress could then decide whether to enact legislation enforcing the report or to take other legislative action.

As I mentioned a moment ago, the basic tenet of the Railway Labor Act scheme is to preserve industrial peace and avoid disruptions to commerce by the exercise of economic self-help.

This Administration quite obviously does not agree with the those Congressional objectives in the rail and airline industries; and it certainly disagrees with the Supreme Court's confirmation of secondary picketing as being in furtherance of those objectives when in upholding secondary picketing it concluded that "the availability of such self-help measures as secondary picketing may increase the effectiveness of the R[ailway] L[abor] A[ct] in settling major disputes by creating an incentive for the parties to settle prior to exhaustion of the statutory procedures." Burlington Northern R.R. v. Brotherhood of Maintenance of Way Employes, 481 U.S. 429, 95 L.Ed 2d 381 at 402 (1987).

During the 55 years of its existence, the National Mediation Board has recommended the creation of Presidential Emergency Boards on more than 200 occasions. Only twice have Presidents rejected those recommendations. In 1987 President Reagan rejected the recommendation in a threatened strike involving the Maine Central, Boston & Maine and Portland Terminal railroads despite requests from every element of the industry and the public generally except, of course, the struck carriers which were under the common ownership of Guilford Transportation, Inc. which in turn is owned by Mr. Timothy Mellon. After some four weeks of strike and turmoil and disruption throughout New England, the Supreme Court issued its decision in the Burlington

Northern case involving an entirely different dispute. In that decision, it unanimously held striking employees to have the legal right to picket secondary employers. Faced with the threat of the exercise of that legal right, President Reagan finally appointed a Board which made its recommendations. When the dispute continued for another 30 days without resolution, Congress enacted the recommendations into law. During the period President Reagan had rejected the Mediation Board's recommendation enormous damage was done to the economy of New England and the lives of the railroad employees from which recovery is not yet complete.

The second President in history to reject the Mediation Board's recommendation, and after only 41 days in office, is President Bush.

No one challenges the fact that given the clear legal rights of the parties to the IAM/Eastern dispute a Section 10 statutory threat exists. However, Secretary Skinner has announced that the President will seek to have Congress eliminate that threat, not by appointing a Board but, by depriving employees of their legal rights if the employees attempt to exercise them.

Of course, the President is fully able to remove the "threat" by appointing a Board but, according to Secretary Skinner, the "proper response" is that the government should not intervene in this labor dispute so that - and I quote from Secretary Skinner's March 3 press conference - "the negotiations between Eastern and its labor unions can go forth unfettered." Yet in the very next breath he says that negotiations during the

60-day no-self-help period would be fruitless "given the fact that this has gone on for 17 months and the unions and management are so far apart right now, there is no reasonably foreseeable result in 60 days that's going to be much different than what we have today." If the Secretary really believes what he says, and I am sure he does, how does he think this dispute will be settled by allowing the "negotiations . . . [to] go forth unfettered." Unfortunately, rail labor perceives the Administration's idea for settlement in these circumstances is a union broken by a lost strike or a bankrupt carrier disavowing its union contracts.

Such a conclusion can result only in great public harm, harm to the struck carrier and harm to its employees; and it is clearly contrary to the spirit and purpose of the Railway Labor Act.

The Administration believes Section 10 of the Railway Labor Act, despite its very successful 55-year history in preventing disruption to commerce, to constitute governmental interference but views legislation which would eliminate existing legal rights of striking employees not to be government interference. We disagree. Such a position is not only patently contrary to fact but, quite simply, illogical.

Rail labor does not believe the Railway Labor Act is perfect by any means. We would very much like to see improvements in the Act. But we are realists as is rail management which, I am sure, also has a list of what it considers to be "improvements" in the Act. Rail labor has no desire to open a door through which evil as well as good may enter. However, it certainly will come as no surprise to any member of this Committee or the Congress that if that door is opened by others, rail labor will seek to protect and improve the interests of the employees it represents to the utmost of its ability.

Thank you.

STATEMENT OF
HENRY A. DUFFY, PRESIDENT
AIR LINE PILOTS ASSOCIATION
BEFORE THE
SUBCOMMITTEE ON AVIATION
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES
MARCH 7, 1989
H.R. 1231
PRESIDENTIAL EMERGENCY BOARD FOR EASTERN AIRLINES

I am here today to urge your support for legislation to mandate the establishment of a Presidential Emergency Board (PEB) in the dispute between Eastern Air Lines and its unionized employees. As you know, the strike by the IAM which began at midnight March 3rd has the full support of the Eastern pilots. Indeed the Eastern pilots have almost unanimously honored the IAM picket lines and the airline is shut down. ALPA supports legislation to mandate a PEB for several reasons.

First, this dispute has national ramifications for our air transportation system. The loss of Eastern service, temporarily and possibly permanently, through financial collapse of the airline in a prolonged dispute, affects the entire country. This is in addition to the loss of 30,000 jobs at Eastern.

Second, the National Mediation Board (NMB) has recommended that an Emergency Board be created. This is the first time that a President has declined to follow an NMB recommendation for a Board. The judgment of the NMB is based on its professional expertise, status, and experience in resolving transportation labor disputes. Its judgment that an Emergency Board is necessary in this situation should be given substantial weight by this Committee.

Third, no negotiations are currently underway which makes it obvious that a Board is necessary to resolve this dispute. Mediation, which is a private process, has run its course. Now an appropriate next step is to create an Emergency Board, a neutral third-party, which can propose a solution. The public recommendations which the Board will make will bring public opinion to bear on the parties. Congress was wise in creating a resolution mechanism such as the Emergency Board as an alternative to the sort of widespread and lengthy disruption that appears to be on the horizon. In fact, ALPA's experience has been positive: in 1979 a Congressionally mandated Emergency Board successfully resolved what appeared to be an interminable two-year strike at Wien Airlines, preventing further disruption.

Fourth, the precedent of abandoning the Railway Labor Act process, which includes an Emergency Board as the final public action to resolve this type of dispute, will undermine future faith in the collective bargaining structure as a means of resolving disputes without extensive disruption.

The bottom line is that, contrary to the expectations of Eastern Air Lines and the Bush Administration, the IAM strike has been effective in shutting down Eastern's operations and disrupting the air transportation system across the nation, leaving the company in a precarious financial situation with no prospect of prompt settlement. Given the resolve of the pilots and other employees of Eastern and the position of the Bush Administration, it is clear to me that the only hope for saving this airline is for the Congress to legislate the establishment of a Emergency Board to assist in the settlement of this dispute. I urge your support.

Mr. **Oberstar**. We have two panels left, and we expect to be able to conclude this process this afternoon in a relatively speedy period of time.

Our next panel consists of: Mr. Clark Onstad, Senior Vice President, Government Affairs, Texas Air Corporation; Mr. John McDonald, Director, Labor Relations and Planning, Eastern Air Lines; and Mr. Richard Wyatt, Partner in the law firm of Akin, Gump, Strauss, Hauer & Feld.

Gentlemen, please come forward.

You are welcome.

We appreciate your patience. We had hoped to have you before the committee an hour and a half ago, but the members were very lively in their questioning, and the witnesses were very lengthy in their responses early on, and that in no way should foreclose any comments that you want to make or shorten your testimony.

You are familiar with the procedures of the committee. Any documentation you wish to submit for the record, the Chair will receive and it will be included immediately following your delivered testimony.

You may proceed, Mr. Onstad, as you see fit.

TESTIMONY OF CLARK ONSTAD, SENIOR VICE PRESIDENT, GOVERNMENT AFFAIRS, TEXAS AIR CORP.; JOHN McDONALD, DIRECTOR, LABOR RELATIONS AND PLANNING, EASTERN AIR LINES; AND RICHARD WYATT, PARTNER IN THE LAW FIRM OF AKIN, GUMP, STRAUSS, HAUER & FELD

Mr. **Onstad**. Thank you, Mr. Chairman.

If I may, I will take a few moments to summarize my testimony, and then I would like to address six or seven points that have been raised over the course of the day here very quickly.

Mr. Chairman, Eastern Airlines and Texas Air have given a lot of thought as to whether or not a Presidential Emergency Board would, in fact, help. In fact, there was a period of time last summer when we were stuck in negotiations and there were no mediations going on—in fact, impasse was declared last July 8—that the management of Texas Air and Eastern actually thought about seeking a Presidential Emergency Board. We chose not to do that at that time, and we oppose a Presidential Emergency Board now. I'd like to take the opportunity to explain why.

Eastern's deliberations have been dominated by the impact of a strike on the men and women of Eastern, their families, Eastern's passengers, and the communities served by Eastern.

The present management of Eastern has been involved in this company for three years. During that time, Eastern's management has acquired a deep appreciation for the people of Eastern and the importance of the company. Enormous amounts of energy and resources have been put into attempting to resuscitate this company. For example, Eastern spends $150 million more per year on maintenance than it did under the prior management.

Also factored into Eastern's judgment about a Presidential Emergency Board is the long history of confrontation by the IAM with the company, dating back to at least 1980. The slow down and, Mr. Chairman, outright vandalism which has occurred and which has been documented in court and took place despite two court orders by the members of the IAM in the last 45 days.

We have also taken into account the financial condition of the company.

Finally, Eastern is very cognizant that the normal collective bargaining process, which applies to all and works in other industries except airlines and railroads, is one where the contract ends and both parties are allowed to seek self-help.

Our people have worked ceaselessly to make Eastern a viable economic entity. Eastern's management's conclusion is that a Presidential Emergency Board will only be contrary to the result intended by H.R. 1231. The reasons are several.

The nine-year history of IAM actions on this property show no hope of an acceptable settlement being worked out by a Presidential Emergency Board.

The airline pilots and the IAM are engaged in a take-over attempted "as a collective bargaining dispute." I have included approximately 40 pages of documentation of their efforts to engage in a take-over attempt. Indeed, it is our belief that they believe that they can take over the company in bankruptcy, and that is one of the key strategies of these two unions. In fact, we believe that there is substantial evidence to that affect.

We also believe that to return to the status quo for a period of time is even more injurious to Eastern's tenuous financial position than a strike, potentially costing more than $200 million.

There is every indication that the IAM would continue the vandalism which they have engaged in and the economic slow down, which we have documented here and we have documented in two court suits.

It is very hard to see how a Presidential Emergency Board can improve on the otherwise generally accepted collective bargaining process.

Eastern's fate rests not in the dispute with the IAM, but in the strike by the pilots. Eastern has demonstrated that it could operate successfully, given a strike by the machinists. Eastern can't operate without its pilots.

Despite an offer of job guarantees, the bulk of Eastern's pilots are not returning to work at this time. Slow downs at other airlines have shown that pilots who do not want to work can cause substantial damage—I refer to the United slow down of 1985.

The key to the Eastern situation is for each Eastern pilot to examine the facts and then decide whether or not there will be an Eastern. No legislation short of government subsidy can change that equation.

I was going to read the quote from Charlie Bryan, which has been taken now by the good Congressman Gingrich, about Martin Ludwig Borman and his Nazi Torched Eastern Policy, but since Mr. Gingrich has put that in the record, I will forego that.

I will make the point that in October 1983 Eastern faced bankruptcy. Eastern faced bankruptcy in 1986.

There has been comment this morning by Mr. Kirkland and Mr. Peterpaul about the $1.5 billion given by the employees of Eastern. A lot of employees have given, and they have given a lot. But I would like to clarify the record about the $260 million Mr. Peterpaul referred to.

The IAM has not given a dime—not one nickel of actual W-2 pay back to that company. What the IAM did was, in 1983, extort a 32-percent pay increase when the company only had 12 days of cash left, and then give back 18 percent of the 32 percent that they extorted from the company, when the other employees were actually making give-backs to that company—give-backs from W-2.

I also would like to take this opportunity to refer to the 97-percent vote which Mr. Peterpaul referred to. I invite the committee to look at every IAM vote over the last 20 years. It has come in between 95 or 98 percent. I also invite you to look at the procedures they use for voting. They are not the same procedures you use.

In 1983, the way the IAM does it, they put up a "yes" box and they put up a "no" box and the IAM officials watch the guys parade up to the box and put their ballot in. That is not the procedure used by the House of Representatives.

I would also like to refer to the article that Mr. DeFazio introduced this morning. It is called the "House of Mirrors," and I would hope that, in the interest——

Mr. ONSTAD. In the same spirit, Mr. DeFazio, I hope you will read the longest letter to the editor in the history of the Wall Street Journal 10 days later which took place pursuant to a meeting between Mr. Norm Perlstein and myself. That letter documents, Mr. DeFazio, that of the $150 million, $130 million is for aircraft payments at rates lower than what Continental Airlines can get today, $13 million is for fuel management system, and the rest of it I don't happen to have with me, but I would hope that at the close of the hearing we may introduce that article for the record and, in a sense, balance Mr. DeFazio.

I would also like to take the opportunity to answer the question, "Why is Mr. Lorenzo such a target?" I have here in my hand a union document. The name on it is Mr. Joe Yurline. Mr. Joe Yurline is a man who works for the AFL–CIO. It is a memorandum dated February 8, 1988 from Mr. Joe Yurline and Mr. Randy Barber to Ms. MaryJane Barry, head of the flight attendants at Eastern Airlines, and Mr. Charlie Bryan.

This is the plan. I invite the members of the committee to take a look at it. Part of this plan, which is to confront Texas Air and Eastern, is to, one, "make Frank Lorenzo the issue"; number two, exert financial pressure on Lorenzo by frustrating his plans; finally I would note just a quote, "We recommend that a lead organizer be retained, at least for a limited period of time, perhaps 6 months. In addition, a P.R. consultant should also be retained for a similar period of time. It is further recommended that a private investigator be retained to investigate Lorenzo. Joe Yurline has done considerable work with and can recommend a pro-labor private eye based in Washington, D.C."

I recommend that the committee examine that and perhaps you will get a more clear idea of why Mr. Lorenzo has been so vilified by labor.

I would also like, Mr. Chairman, to answer the question of whether or not a Presidential Emergency Board would work by referring back to the fact that during the last 30 days, during the cooling down period, the International Association of Machinists did not present one single new offer or one single counter-offer at the bargaining table. The reason I submit that occurred is because the chairman of the National Mediation Board signaled that there was going to be a Presidential Emergency Board. That destroyed the collective bargaining process during the last 30 days.

I would also like, Mr. Chairman, if I may—people have asked this morning what Texas Air has put into it. I believe that was Mr. Kirkland. Texas Air has entered into any number of guarantees, the most recent of which was when Eastern had to borrow $200 million to get through a certain period recently, which they borrowed at 17 percent interest, which is like taking out your VISA card and charging $200 million. Texas Air guaranteed the interest expense on that particular debt.

There are a number of other guarantees which I would be glad to submit for the record.

You should also know that on the night we took over Eastern Mr. Harvey Miller of some bankruptcy fame was on the premises. The bankruptcy papers were drafted. Eastern Airlines was on the verge of going out of business. As Mr. Borman says in his book, "We had to fix it, sell it, or tank it." The subsequent purchase by Texas Air allowed Eastern to refinance $500 million, something which Mr. Borman, Eastern, in its independent state, could not do. Subsequently, we have, through Texas Air's auspices, made available to Eastern, in the form of sales, etc., several hundred more million dollars of cash.

I think, Mr. Chairman, that with those comments I think I have covered the major points that came up this morning that I would like to deal with.

I will certainly take any and all questions, Mr. Chairman.

Mr. OBERSTAR. Thank you very much, Mr. Onstad. We do appreciate your participation in the hearing. I'm sure this is a very difficult matter for you, and that it involved a great deal of extra effort to prepare on relatively short notice for a hearing of this magnitude.

Mr. ONSTAD. Mr. Chairman, I forgot one other point.

Mr. OBERSTAR. You certainly are very imminently qualified to represent the carrier and your principals in this hearing and in this process.

Please go ahead.

Mr. ONSTAD. I'm sorry. I forgot one other point.

There was a question this morning by a number of members which I thought was a very good question: Did Mr. Lorenzo miscalculate or misrepresent when the pilots didn't cross the picket line? I think that is a very important question asked by a number of members, and I think we ought to deal with that question right up front.

First off, we did think a lot of people would cross the picket line——

Mr. MOLINARI. Before you do that, may I interrupt you for a second?

Mr. ONSTAD. Sure.

Mr. MOLINARI. Would you also permit an observation that the same remark was made by Mr. Skinner, Secretary of Transportation, when he testified?

Mr. ONSTAD. I think the record will speak for itself, but my recollection of Mr. Skinner is somewhat different, Mr. Molinari. But let's just deal with the question.

We expected approximately 800 pilots to cross the picket lines initially. We had what I will call a 25 percent schedule on the basis of that. What we didn't count one, and what is being heard in district court in Miami right now, is an illegal strike by the Air Line Pilots Association. There is a federal district judge hearing that this afternoon.

It is legal for the Air Line Pilots Association to engage in a sympathy strike. It is illegal for them to take self-help when they are during this period of status quo under their own contract. We won't resolve that question here this afternoon, but a federal district judge, who is taking testimony and has briefs before him this afternoon, will.

We believe, as has been stated numerous times, and as is set forth in the appendices to our testimony today, that, indeed, the Air Line Pilots Association is engaged on a strike on its own behalf. It is convenient that they have chosen to do it the same time as the IAM, but we believe it is in violation of the Railway Labor Act. That is something we did not count on when we made the representations that we thought the pilots would cross the picket line.

We also thought that the animosity between the pilots and the IAM—which is well known—would be a factor here, and also thought the animosity between the pilots and the IAM based on the United Airline situation which occurred earlier this year where the IAM entered into what has been called a "silver parachute" to prevent the pilots from taking over the company would be a factor.

And we also, quite frankly, did not anticipate the degree of publicity which the matter received over the past three weeks. We also didn't anticipate the degree of intimidation. We have a tape taken from a pilot's answering machine with the kinds of calls he has gotten, and we would be more than happy to make that available. It is not presentable in public, Mr. Chairman, but we'd be more than happy to have the members of this committee listen to the kinds of intimidation one particular pilot has gone through over the past weekend. It is here in Washington. We'd be glad to make it available.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Could you tell me, Mr. Onstad, with specific numbers, if the labor costs at Eastern differ significantly from those of other airlines for baggage handlers, machinists, pilots, and flight attendants?

Mr. ONSTAD. Mr. Chairman, I'd like to give you some—I can't break it out for you, but I can give you some broad gauges that I think will help you get a focus on this matter.

For example, Mr. Chairman, the average wage and benefit expense among the major carriers as a percentage of operating revenues is 31.4 percent. At Eastern Airlines it is 37.4 percent. Now, why did I use wages and benefits as an expense as a percentage of operating revenues as opposed to operating costs? The reason is because you have got to generate revenues to cover costs. Eastern is in a very low-fare environment. The East Coast of the United States is the most competitive environment there is. There is more discount travel and vacation travel as a percentage of total travel in that north-south market than there is in any market in the country, and that's why I use that parameter.

Mr. Chairman, I'd also like to refer you to another very important number which relates to Mr. Peterpaul's testimony, as well, which is productivity. The average—we look at productivity as how many seats you generate because that's what you have out in the market. How many bodies you can put in depends upon how many seats you have.

So the available seat miles per average dollar per employee of wage and fringe benefits at Eastern is 1.1, whereas the productivity at Delta is 1.7, United is 2.2, American is 2.2, and Continental is 2.3. In other words, Eastern has half the productivity of the other major carriers.

Mr. OBERSTAR. Apparently there are many ways of expressing an answer to the question I asked, and that is one of them. There are others. Labor expenses per available seat miles—you can compare average wage of baggage handlers at a number of airlines to those at Eastern and the flat-out wages and benefits of machinists at other carriers. It seems to me that on a range of those issues Eastern comes sort of in the middle or certainly not at the top and not the highest cost operator. There are other operators that pay somewhat higher wages, somewhat higher costs in other areas. So I'm just trying to understand what it is.

I know that the East Coast market is cyclical, but I also know that Eastern is the second largest individual carrier in that market. And Delta, operating in that same market place, has considerably higher labor costs in some cases.

Mr. ONSTAD. Mr. Chairman, let me run at it from a different angle.

When we started airline deregulation—and I know that some members of this committee have heard this argument before, but it happens to be true—we didn't start with a level playing field. Some carriers started with $1 billion in cash, such as United and American. Others started with very strong hubs and very little competition. Unfortunately, Eastern was saddled with an old fleet, a lot of competition, and a lot of debt.

What happened is that, if you take a look at Delta, Delta hasn't faced bankruptcy three times in the last nine years. Eastern has faced bankruptcy three times in the last nine years. If you take a look at American Airlines, American was very astute. They started the first "B scale" even before Continental went into bankruptcy.

But you may find it interesting, Mr. Chairman, to know that American Airlines, through a subsidiary called AMR Services Corp., which is prevalent at all its new hubs, pays $5.25 an hour for baggage handlers. In other words, American hasn't spread its high labor costs from its old hub to its new hubs. They have formed a subsidiary called AMR Services which pays $5.25.

So it is with a combination of B scales, $5.25 baggage handlers, and things of that nature with which Eastern has to compete.

For example, if you look at the Charlotte hub and the Nashville hub of American Airlines and the San Juan hub, Eastern is competing against those today, Mr.Chairman.

Mr. **Oberstar**. I understand. I appreciate your clarification.

I'd like to ask, also, since losses per day have been a major factor, how much is Eastern, by your estimates, losing per day during the strike?

Mr. **Onstad**. Mr. Chairman, we have been reluctant to give out, as you might understand, corporate financial information because we are dealing with a very fragile company and we are trying to maintain the fabric of the company as best we can.

I will say this: as detailed in my statement, the expenses rose dramatically and the revenues dropped dramatically beginning with the cooling down period. We saw travel agents booking away. We saw travel agents——

Mr. **Oberstar**. I understand that, Mr. Onstad.

Mr. **Onstad**. I'm going to give you an answer.

Mr. **Oberstar**. Are you getting to the answer of the question?

Mr. **Onstad**. If you will, Mr. Chairman, the $1 million a day is a number prior to all of those events occurring. So that is a number prior to February 1.

Since February 1 we have been losing money at an increasing rate, and I'm afraid, Mr. Chairman, that in a public forum I am just not prepared to give you that number. It is just too sensitive.

Mr. **Oberstar**. Well, I can respect that; but, on the other hand, since the question of losses is central to the question of whether there should be a Presidential Emergency Board, it is something that, if your are reluctant to discuss publicly, then at least we ought to discuss in some other fashion so that we have the available facts for our judgment.

I would observe that Eastern was not reluctant at all to let it be known it was losing $1 million a day, that the longer this mediation board went on, the more the losses would be, and that if there were a Presidential Emergency Board it would simply continue to lose money while that board deliberated.

Now, let me get to that point because my time is expiring, if it hasn't already expired. I'm trying to get this hearing to a conclusion.

Sixty days appears to be a very long period of time, and if—and I'm not trying to put you in a position of accepting a Presidential Emergency Board because it is clear you don't want one, and we understand that. The President said he wouldn't do it.

But if one were to be legislated and enacted, would two weeks be sufficient? Three weeks? Four weeks?

Mr. **Onstad**. Mr. Chairman——

Mr. **Oberstar**. Does it take that long for a board to find facts, make recommendations?

Mr. **Onstad**. This process has been going on many, many months, and, as was referred to by the union panel, there are boxes and boxes and boxes of relevant documents to this process. That is a very complicated question.

Whether or not somebody could reach the conclusion in two or three weeks coming in cold from the outside after the National Media Board talked to our financial advisors, talked to lots of different people, and they weren't able to bring this to a head, I find it hard to believe.

I will say this to you: I don't think Eastern has the cash to survive two weeks of a Presidential Emergency Board. That is how tenuous the situation is.

Mr. **Oberstar**. But it has the cash to survive the strike?

Mr. **Onstad**. Mr. Chairman, if the pilots don't come back to work, that question is still an open question.

Mr. **Oberstar**. Thank you.

The gentleman from Minnesota, Mr. Stangeland.

Mr. **Stangeland**. Thank you, Mr. Chairman.

I'd like to follow up with a question based on what Mr. Oberstar just asked you, and I'm not sure you will want to reveal the time, but I would like to ask how long Eastern can survive as an entity with a strike. Maybe you don't even care to give me a day, but are we talking about two weeks? A month?

Obviously, if my understanding is right and you were losing $1 million a day up to maybe February 1, by not flying, your costs are substantially reduced because you're not paying pilots and labor workers, so now your cost is substantially less then if you were actually flying.

Mr. **Onstad**. Mr. Stangeland, at the same time, we have to pay for airplanes and a number of other——

Mr. **Stangeland**. I realize you have fixed costs. Sure.

Mr. **Onstad**. There are a lot of fixed costs that go on here.

Eastern is in a real time cash mode in the sense—the reason why I am here, as opposed to some others, is because they're trying to figure out exactly the answer to that question.

What has, in effect, happened is that our total inventory has disappeared. It takes months to build up an inventory of passengers. Eastern doesn't have an inventory of passengers once this strike occurred.

So you're sitting out there operating. Our load factor on Saturday was 40 percent, for example, out of the few flights we operated. So, at the same time, we have passengers who are demanding refunds and getting refunds.

Now, the question is: how soon and how long is the run on the bank from refunds? That's why people are sitting down trying to figure that out. They've been working on it around the clock through the weekend and into the week.

So we have a cash drain of refunds, we have very little revenue coming in, and we have high fixed expenses. So it is a very difficult equation. It is not easy.

Mr. **Stangeland**. I would assume by my figures—and correct me if I am wrong—the delay resulting from the mediation procedures has cost Eastern so far approximately $500 million. Would that be a fair statement?

Mr. **Onstad**. Mr. Stangeland, in just losses that is correct. But it has cost us a lot more because our competitors have been growing at the same time and we haven't been able to grow.

Mr. **Stangeland**. Should Eastern not survive—and you just answered Mr. Oberstar saying that you did not believe Eastern could survive an additional 60-day cooling off period, should Eastern not survive our legislatively imposed cooling off period, is it your opinion that Congress should compensate Eastern's stockholders, creditors, and non-union employees should that take place? Do we have a responsibility?

Mr. **Onstad**. Mr. Stangeland, we have looked at this question and we think there is a serious Constitutional question to whether or not that would be an unjust taking under the fifth amendment. Were that to occur, I am quite confident that, based on the initial legal opinions we have, if they hold to be true, we would pursue that option.

Mr. **Stangeland**. How would Eastern's failure affect potential benefits of retired Eastern employees, the benefits of current employees, and what would be the cost to the U.S. Government if Eastern could not pay these benefits?

Mr. **Onstad**. Mr. Stangeland, there are two kinds of pensions at Eastern, as I understand it, if we deal just with the pilots for a moment. There is one which is guaranteed by the Pension Benefit Guarantee Board, which is underfunded and has been underfunded for many years before we got there. There is another, which is not guaranteed, and therefore that has to be paid for out of an ongoing company.

For example, my understanding is that the pension benefits of Mr. Ron Copeland, who is a member of the bargaining committee, will drop from $3,500 a month to $1,300 a month if Eastern goes out of existence.

So the question as to whether or not Eastern's pensions would be covered would depend upon the liquidation value of the company, and I'm just not qualified to speculate or answer that question.

Mr. **Stangeland**. I'm afraid my time is going to run out very quickly. I have one more question. Texas Air and Mr. Lorenzo are blamed for Eastern's financial troubles—and let me say that I wouldn't have known who you were until you sat at that table, and I wouldn't know Frank Lorenzo if he walked in that door, and I doubt if he'd know me. But they are being blamed. In your opinion, would Eastern have survived if it had not been taken over by Texas Air at the time that Mr. Lorenzo and Texas Air took it over? Would it have survived?

Mr. **Onstad**. Absolutely not. Mr. Borman has testified. He has gone on TV to say that the night in February three years ago he had the bankruptcy lawyers on the premises and he had to either fix it, sell it, or tank it that night. And, in fact, the bleedings were prepared to be filed. In our judgment, Eastern would not have survived.

A good example of that is that with all the losses that have occurred—the $500 million that you have referenced earlier, Mr. Stangeland—that money has come from cash which Texas Air has raised one way or another. It has not come from Eastern cash reserves. Eastern just doesn't have it.

Mr. **Stangeland**. I'll forego any further questions at this point, Mr. Chairman.

Mr. **Oberstar**. The gentleman's time has expired.

The gentleman from Oregon, Mr. DeFazio.

Mr. **DeFazio**. Thank you, Mr. Chairman.

Does Eastern want to reach a settlement with the IAM?

Mr. ONSTAD. We have very desperately tried to reach a settlement with the IAM.

Let me give you just one example. When we came into the company we realized that there was a past history of dispute. As a result, we formulated a $100 million job retraining program for the machinist members who were baggage handlers. This is unprecedented in American industry.

What we said to these people—who, at that time, were making on average $47,000 a year in wages and fringe benefits—"We will put you to school, we will pay your tuition, and we will pay your wages to allow you to go become an airplane and powerplant mechanic, a job which would be available at Eastern Airlines if we made some cost changes.

"We understand trying to move from $47,000 down to a baggage handler in market place wages is tough, and, therefore, we'll pay your education, we'll pay your tuition, we'll pay your wages."

We tried that offer. Unfortunately, that offer didn't work. We put it on the table. We have tried and tried to get that offer accepted, and we failed.

Mr. DEFAZIO. I'm just reflecting on your testimony where you say, "Eastern's fate rests not in the dispute with the IAM," and I believe you basically said they had their right to strike, or whatever.

But in the strike of the pilots Eastern has demonstrated that it can operate successfully given a strike by the machinists. And apparently you have set up some arrangements to bring in machinists and others.

So if there a prospect of a settlement here? Do you think you can survive a strike with machinists, but what you are really concerned about is the strike of the pilots? And now you're saying the pilots aren't striking in sympathy but striking for their own selfish purposes. And you are, in fact, in Federal court attempting to prove their state of mind.

It doesn't seem to me that you want to settle with the IAM. You're saying that here, and you're really targeted on the pilots?

Mr. ONSTAD. I think you missed the context of time. What I'm saying is that whether Eastern survives or not over the next few weeks depends on the pilots. That is not the question of whether or not you want an agreement with the machinists.

We have tried to get into an agreement with the machinists since the day we came on the property, and we have spent long hours trying to do that. We have made any number of offers to the machinists, and I, in my testimony, invite the committee to request from the machinists copies of the offers that they have made. I think you'll find that they are relatively few.

We have made three offers in the last 30-day cooling-down period. We got none in return.

So we very much want an agreement with the machinists. We believe that an agreement with the machinists is in the best interest of the company. Unfortunately, the parties are so far apart—because this hasn't come out today, let me just explain: the last offer of the machinists is for a one-year wage freeze and a $50 million pay raise. We are asking for $125 million pay cuts. That's how far apart these parties remain after 17 months. They want a pay raise. They are still 28 percent above every other employee at Eastern Airlines today on a pay rate.

Mr. DeFazio. On the pension funds, what if Eastern were to declare bankruptcy? What happens to the $750 million unfunded liability if Eastern were to seek protection of bankruptcy? To whom does that obligation fall?

Mr. Onstad. I cannot, at this table today, parcel out between what the assets of Eastern are and they aren't vis-a-vis that question. Obviously, to the extent, as you probably know, the PBGC has a priority in bankruptcy, and they and the IRS have a priority. So depending on that priority and what the assets are, that is how these kind of things get worked out in any corporate situation.

Mr. DeFazio. Finally, on this issue of the article in the "Wall Street Journal" which responded, I am just a simple person and I look for simple solutions to things——

Mr. Onstad. I prefer balance, too.

Mr. DeFazio. Well, that's great.

The question here about the computerized reservation system—again, I perhaps could see your response when I have that letter, but the "Wall Street Journal" alleges it was very profitable and, in fact, generated $255 million in cash in 1986 for Eastern Airlines.

It ostensibly was sold to the parent company under very favorable terms like 6.5 percent interest and the debts payable in the year 2001. The point being here: a favorable sale, a lucrative asset, it was supposed to be improved, and the "Wall Street Journal" alleges there was no investment, so it seems to me that you could have met your total $1 million a day obligation by hanging on to a profitable system and not selling it to the parent company under such favorable terms.

Mr. Onstad. First off, System I has never made a profit. Second, System I, at that time, was 12 percent of the industry's CRS systems; today, it is 18 percent because of the investment of Texas Air—an investment which Eastern Airlines didn't have the money to do; third, we have put $200 million into System I since that period of time—money that Eastern did not have, but because of the halo effect of CRS systems, which have been discussed in this committee room at some length, Eastern has benefited. And, in fact, sir, Eastern pays less today on an operating basis for its CRS systems then it paid before Texas Air bought it.

Mr. DeFazio. Well, I guess the "Journal" is wrong again.

Mr. Onstad. Yes.

Mr. Oberstar. The gentleman's time has expired.

The gentleman from New York, Mr. Molinari.

Mr. Molinari. I'd like to get a better picture, if I could, of the dollars and cents that are involved here. I am a little confused by conflicting testimony that we have had here today.

Do I understand the position of your company that prior to the strike Eastern Airlines was losing about $400 million a year?

Mr. Onstad. That is the most recent publicly reported number at the 12/31—actually, I think it was $462 million, but I would be——

Mr. Molinari. So $452 million is——

Mr. Onstad. No, $462, I think.

Mr. Molinari. In your plan is Eastern seeking a further pay cut voluntarily from the airline pilots?

Mr. ONSTAD. We did not ask them for any W-2 cuts. What we asked them for was an increase in flying, not up the federal air regulations, but an increase in flying so we have more productivity. And then we also asked for a cut in certain fringe benefits, as I recall it. But I can't give you right here the break-out between what was in productivity and otherwise.

Other than—I am advised by people who were more intimately involved than I was—some minor pension plan changes, it was all productivity and work rules in the $64 million, Mr. Molinari.

Mr. MOLINARI. The $64 million is what you equate the value of those exchanges from the pilots to be?

Mr. ONSTAD. Right. And in return for a guarantee of 222 airplanes on the property, and other guarantees as to furloughs and things of that nature, and a fence agreement that protected them from a merger with Continental Airline Pilots.

Mr. MOLINARI. You used the term before referring to the machinists—and a strong term—that they extorted pay increases from you.

Mr. ONSTAD. From Eastern Airlines.

Mr. MOLINARI. From Eastern Airlines.

Mr. ONSTAD. That's right. In 1983.

Mr. MOLINARI. Wasn't that true collective bargaining, the process that you are advocating now?

Mr. ONSTAD. Mr. Molinari, when a company has 12 days of cash and everybody else is making give-backs, and it is publicly known that Mr. Borman has declared that within "*x*" days this company is kaput, and somebody else asks for 32 percent, I call it extortion. Whether you view it through the collective bargaining process or not, 32 percent is still extortion.

Mr. MOLINARI. The fact is that, whether it was fair or unfair, if you were belonging to that union you would say your union leader served you well in that you didn't have to take a cut like the other unions.

Mr. ONSTAD. I guess it depends——

Mr. MOLINARI. That's collective bargaining, I think.

Let me go beyond that, because I'm running out of time. You're talking about a $452 million annual loss. You're looking for some increase in productivity gains from the Air Line Pilots Association. And if you were to get all you have asked for from the machinists, that would amount to some $125 million a year. How in the world—now, couple that with what has transpired in the interim that there has been a strike, you have lost tremendous bookings—god knows how much that is going to translate into dollars—without a strike I don't see how Eastern Airlines could survive if you take everything that you want from the pilots and from the machinists.

Now, on top of that, with the strike having taken place and you have lost your passengers temporarily—and in some cases permanently—how do these give-backs permit Eastern Airlines to survive?

Mr. ONSTAD. That's a very good question. It is one that our employees have asked us repeatedly. As a result, we drafted a document called, "The Recovery Potential." I'd be glad to make it a part of the record, Mr. Molinari.

What it says is that with a modest recovery of the business traveller, based on time performance, etc., we think the revenue impact of that is between $60 million and $125 million. We think that partial recovery of other lost traffic—and there was a number thrown out this morning as to what has happened to Eastern's market share in Atlanta, and it has gone from about a 55/45 to a 70/30 with Delta. We think with a modest recovery of traffic we would get between $100 million and $200 million in revenue.

We also think that targeting the new programs for customers is between $30 million and $50 million.

The total effect of that is between $190 million and $375 million in revenues. If you add that to the cost savings that we would get from the IAM and the ALPA and the TWU, and that's how we have defined for our own employees the recovery plan.

Mr. **Molinari**. I have one last question.

Mr. **Oberstar**. The gentleman's time has expired.

Mr. **Molinari**. A brief question.

I wanted to ask about some revenue projections on this chart, if you would permit. It would take me one minute, Mr. Chairman.

Mr. **Oberstar**. With a brief answer.

Mr. **Molinari**. This is your Eastern Airlines Finances and Operations Chart. It is Eastern's figures.

Looking at the chart, just for the sake of brevity in time, in 1986 and 1987, during those two years, if we look at the passenger side you show an increase from 42.7 million to 44.7, 2 million increased passengers in that one year. Departures went from 558,000 down to 528,000—30,000 less departures. And yet, the net loss went up from $131 million to $182 million, or some $51 million more despite the fact that you had an increase in passengers amounting to $2 million dollars, and I expect that you would have a loss in operating costs because you had 30,000 less departures. How do you explain those figures? Was there a sale of assets involved there somehow?

Mr. **Onstad**. Mr. Chairman, that is a——

Mr. **Molinari**. I would expect the figures, frankly, to go the other way.

Mr. **Onstad**. I understand. There are a number of things in that. First off, we began spending more money on maintenance at Eastern. As I said earlier, we have spent $150 million more a year on maintenance than was spent by the prior management. There are other increased costs. I will tell you that I would be more than happy to answer that for the record, because we are going to get into a question of how to break that out, and I just can't do it sitting here.

Mr. **Molinari**. Please do provide that for the record. Also, for the record, I notice there is an increase in the number of employees of about 1,700 in that year, and I wondered why, in light of your financial plight, you increased those numbers by 1,700 in one year. I'd like to get a response on that for the record, as well

Mr. **Onstad**. I have to check and see what point of the year these employment numbers are taken from. I don't know whether they are at mid-point, year-end, or just what they are. At Eastern, they may well be affected by seasonality if it is year-end and part-time workers, etc., and it will take me a while to get that.

Mr. **Molinari**. Thank you, Mr. Chairman.

Mr. Oberstar. You may submit the documentation to the committee. We will see that Mr. Molinari receives it.

Mr. Oberstar. The gentleman from Texas, Mr. Laughlin?

Mr. Laughlin. I'll pass. Thank you, Mr. Chairman.

Mr. Oberstar. The gentleman from California, Mr. Bosco?

Mr. Bosco. Thank you, Mr. Chairman.

I have been a student of Frank Lorenzo's financing for over a decade now, and we went through a hugh battle such as this back in the California Legislature. I will warn anyone on this panel or in Congress not to attempt to analyze the labyrinth of financing that Mr. Lorenzo has established.

I have asked experts to do it, and they have tried. One cannot pick up simple charts or newspaper articles and undo what has been done. That is why I neither believe nor am sympathetic with the plea that Eastern is in this terrible, dire situation that it is in solely because of its employees.

But let me, having given that advice, break it and ask a simple accounting question—and this has come up before.

The "Wall Street Journal" says that your own securities analyst valued your computer system—one part of your computer system, alone—at over $200 million, and you sold it to your parent company for $100 million. Now, as far as an accounting entry, is that a loss to Eastern Airlines if it sells an asset worth $200 million for $100 million?

Now, I know you improved it at the parent company and all that, but the asset had a value when you sold it, and you sold it at very little cash—all low-interest financing. Is that entered as a loss to Eastern when you sell an asset for half its value?

Mr. Onstad. Mr. Bosco, first off, as we point out in the response ten days later to the "Wall Street Journal" story, that is an apples and oranges number. That's why I can't agree with the predicate of your question.

The one valuation, the higher valuation you are referring to, is as if you took System I and sold it as a separate, stand-alone company with no Eastern Airlines in it. That has a higher valuation than does if Eastern is staying in the system. The lower valuation assumes that Eastern stays in the system and uses 45 percent of the computer capacity of the company, and that is the difference between those two numbers.

And so, therefore, they are not comparable numbers.

Mr. Bosco. When you sold that asset, did you enter it as a loss to Eastern Airlines or as a gain?

Mr. Onstad. We registered as a gain, because that is what the correct valuation of it would be.

Mr. Bosco. That's the information I wanted.

Thank you very much, Mr. Chairman.

Mr. Oberstar. We thank the gentleman.

The Chair recognizes the gentleman from Ohio, Mr. McEwen.

Mr. McEwen. Thank you, Mr. Chairman.

Mr. Onstad, you mention in your testimony that it has long been the desire of Mr. Bryan to purchase the airline, and that he said on a radio program, "People think this is a labor/management dispute; this is a corporate investor dispute, that he would like to be a part of the decision process, and that their goal is to force Lorenzo to sell Eastern." And one of the union's financial advisors is T. Boone Pickens, who outlined how to use the pension funds.

Walk me through the process. You then go on to elaborate that their goal is to drive down the value of the stock, hold public meetings saying that Eastern is unsafe, they suggested that they would not blame consumers if they stopped flying Eastern as a result of the safety campaign, they distributed 250,000 post cards and encouraged them to send them to Members of Congress alleging safety problems.

Having once done that, having driven down the value of the stock, having created questions in the public mind that it is a viable company, now where do we go from here? How do they go about purchasing it?

Mr. **Onstad**. As I indicated earlier, we believe that they have, in fact, consulted advisors as to how to buy the company in bankruptcy, and we believe that is one of the strategies of the leadership of the unions.

It is not unfamiliar territory where the leadership of the international—and I did not include certain quotes from Mr. Duffy today, which I certainly could have where he has made it more than clear that he would like to see the lower-cost pilot carriers depart from the face of the earth.

They have a strategy at the international which is separate from the strategy at the local. We have seen that at numerous examples. How they would do that in bankruptcy is to offer wage cuts—and, as my testimony indicates, they have offered half a billion dollars in wage cuts to other potential purchasers that they have not offered to Texas Air. They would offer those kinds of wage cuts and combine them with the work of the arbitragers.

As you probably know, what happens in bankruptcy today is that the arbs come in, buy up the debt at 50 cents on the dollar or 30 cents on the dollar, and they would then try to make a viable proposition out of it.

Mr. **McEwen**. Who would be the owners at that point?

Mr. **Onstad**. That would depend upon the relative negotiating power of the employees versus the arbitragers.

Mr. **McEwen**. But would there be a unified front between TWU and ALPA and IAM?

Mr. **Onstad**. I have here, and am prepared to submit it for the record, an agreement which was entered into in July of this year, which is exactly for that purpose. It is initialled by Charlie Bryan, though I don't happen to have the copy with Charlie's signature on it.

The people who are participants in this agreement are ALPA, IAM, and TWU, and this is called "Acquisition Accordance Agreement."

Mr. **McEwen**. Can you give me a thumb nail as to who comes out on top?

Mr. **Onstad**. It is pretty interesting to go through this thing and figure it out. I can't give you from here which comes on top, but my learned counsel here may be able to tell you.

Learned counsel makes the point that Texas Air loses the company under the deal. Who comes out on top, I can't tell you. But it won't surprise you that Texas Air loses.

Mr. McEwen. Mr. Chairman, I'd ask that that be made a part of the record.

Thank you.

Mr. Oberstar. Is that a document that you have and no other party has?

Mr. Onstad. No other party in the sense of parties appearing before this—it is a document prepared for the panel that preceded me in the sense that it is a document that is done for the TWU, ALPA, and the IAM, and which I'm sure Mr. Peterpaul is familiar with, as Mr. Bryan initialled one copy, we are told, in deposition.

Mr. Oberstar. We'll take a look and take it under advisement as to whether to include that document in the record.

Mr. Onstad. Thank you.

Mr. Oberstar. The Chair recognizes the gentlewoman from New York.

Ms. Slaughter. Thank you, Mr. Chairman.

Mr. Onstad, when did Texas Air and Eastern know that the Eastern ALPA pilots were not going to fly?

Mr. Onstad. Saturday morning.

Ms. Slaughter. Saturday morning?

Mr. Onstad. I got a call from the president of Eastern, Mr. Phil Bates, who was on the road into the office from his car. He called me on his car phone and told me the pilots weren't flying.

Ms. Slaughter. Secretary Skinner made it clear to me this morning that he had been told directly by Mr. Lorenzo that the pilot would fly. What was that based on?

Mr. Onstad. That was based upon the fact that we did not think the pilots would engage in an illegal strike. We believe they are currently engaged in an illegal strike. As I testified earlier, that court hearing is going on in Miami right now.

Ms. Slaughter. Did you ask them?

Mr. Onstad. It is the position of the Air Line Pilots Association, in their official by-laws, not to tell you until the actual night at midnight of the strike whether or not they are going to fly.

We did ask individual members of the Air Line Pilots Association, and they had indicated to us that they would fly.

Ms. Slaughter. There was quite a bit of word around the halls here last Thursday that they were not going to. But if you had made an agreement—that, as I understand from something someone said this morning was abrogated—with Continental to provide you with 500 pilots, wouldn't that sort of indicate that you weren't any too sure that the Eastern pilots would fly?

Mr. Onstad. The agreement was entered into about a year ago. In subsequent negotiations with the pilots and discussions with the pilots we changed our opinion and let that agreement lapse rather than appeal a court decision on the Orion deal, which has also been the subject of a hearing by this committee.

Ms. Slaughter. I think what we are called on here today is to try to determine precisely what everybody wants for the future of this airline. It is difficult to do, particularly since it is the company that does not want the Emergency Board.

A question I think I also need to ask: since you have given up all your money-making assets at Eastern—the shuttle, aircraft routes, gates, reservation systems, and so forth—and if what we heard this morning is true that everything that you are asking back from the mechanics does not equal what you pay a year in interest on your debt, what hope do you have of survival if you get that pay back?

Mr. ONSTAD. A number of things. We have not given up all of our gates, routes, etc., as——

Ms. SLAUGHTER. Some of them. Some of your profitable ones, however.

Mr. ONSTAD. We still have the shuttle. We sit here today still owning the shuttle. We haven't——

Ms. SLAUGHTER. That was a surprise, wasn't it?

Mr. ONSTAD. Well, it may be, but we still own the shuttle.

Ms. SLAUGHTER. And, as I understand it, Mr. Trump, one of our New York businessmen, decided to wait a little while.

Mr. ONSTAD. Donald has decided to wait a little while, so we still own all these assets at Eastern Airline. As we indicated—and I indicated in response to Mr. Molinari's question—we have a document here which I have offered to make available for the record which is a recovery plan which shows how if you take the cost savings plus the revenue enhancement—believe me, when you start operating month after month as the number one on-time performance carrier in America, people change their mind about your service. Things like that have a marked impact, and we think with labor peace things like that would continue and enhance the value of the airline.

Ms. SLAUGHTER. Well, an article that I read in the "New York Times" somewhere around the holiday period indicated that there was something like $16 million debt still owed to Eastern by Texas Air on the purchase price that had been interest-free for 2⅔ years or something like that.

Mr. ONSTAD. That is a fascinating accounting transaction which, in fact, there was no money that ever changed hands on that deal. All we did was take that accounting entry up to the holding company. It is the subject of a long deposition. It is the subject of an opinion by Arthur Anderson. I am not a competent enough accountant to handle that.

But of all the money that Eastern has lost, $16 million is a small portion.

Ms. SLAUGHTER. It may be, sir, but if you were in dire straits as an airline and somebody owed you $16 million wouldn't you ask them to pay up or give you interest?

Mr. ONSTAD. If they owed it, that's true. But, unfortunately, you'll find that under the accounting opinions it is not owed; it is simply a transaction which occurred as part of the acquisition price. The unions have alleged it is owed, but it is not owed. I would be glad to——

Ms. SLAUGHTER. I didn't read this from the unions. I read this in the "New York Times." As part of the purchase price agreed on between Texas Air and Eastern Airlines, there was some $16 million outstanding.

Mr. ONSTAD. I am familiar with Mr. William Stockton's article that you take that from. That, however, comes from a union allegation. It has been the subject of much litigation.

Ms. SLAUGHTER. Did you pay?

Mr. ONSTAD. The answer is that there is no money to pay. That is a union allegation——

Ms. SLAUGHTER. No payment has taken place. No money has——

Mr. ONSTAD. There is no money to pay, Ms. Slaughter.

Ms. SLAUGHTER. You mean you have no money to pay or you don't owe it?

Mr. ONSTAD. I'm saying that it is not a cash transaction which Texas Air owes to Eastern.

Ms. SLAUGHTER. What is it?

Mr. ONSTAD. It is simply an accounting entry as to where you carry a certain acquisition cost. I am not prepared at this point to go beyond that, but anybody on the committee who wants to take the time to go through the deposition and to look at the Arthur Anderson opinion is more than welcome to do so. It is a matter of court record.

Mr. OBERSTAR. The time of the gentlewoman has expired.

The Chair recognizes the gentleman from North Carolina.

Mr. BALLENGER. Considering the effort that my compatriot from Ohio brought forward on the effort by the unions to buy Eastern, or at least—you know, if a businessman was doing what they are doing, wouldn't they end up in jail? Unless I'm mistaken, the effort to break the company and make them go bankrupt and they try to buy it—I don't know who our latest raider on Wall Street is, but it sounds like it fits very well into that pattern. Am I mistaken, in your viewpoint, as far as you are concerned?

Mr. ONSTAD. No. You are 100 percent right. We believe that there is a loophole in the securities laws which allows the unions to engage in this kind of activity. And the document which I offered for the record earlier is an outline of how to do that.

Also, we have on file a RICO suit, because that is the only kind of piece of law that is on the books that allows you to try to stop that. Now, I understand the criticisms of RICO that Capitol Hill has reigned down that statute, but, unfortunately, there is no other piece of law on the books that allows you to take a situation where a union is trying to take over the company and defend yourself. You don't have the same kind of things if it is a Carl Icon or anybody else when it is cloaked in the collective bargaining process, such as it is here.

Mr. BALLENGER. Thank you. You have cleared my mind just a little bit.

Mr. OBERSTAR. We thank the gentleman.

The gentleman from Colorado, Mr. Skaggs.

Mr. SKAGGS. Thank you, Mr.Chairman.

Mr. Onstad, I'm curious how you happen to be our witness this afternoon rather than Mr. Lorenzo?

Mr. ONSTAD. The answer is that Eastern's cash position is a matter of intense interest, and Mr. Lorenzo and Mr. Bates are working on Eastern's cash position this afternoon. Given the relative priorities, we thought that it was appropriate that I be the witness today. Certainly in most of my appearances before this committee nobody has objected yet to my——

Mr. SKAGGS. I'm not objecting. It is a pleasure to have you here.

If you could check for me, I was just out in the hall a little while ago and it looked like it was Mr. Lorenzo in front of the microphones out there. I guess I was mistaken on that. I just wanted to clear that up.

Would you tell us what the industry average is, for example, for a 727 captain?

Mr. ONSTAD. I do not have that number at hand.

Mr. SKAGGS. Does Mr. McDonald have that kind of information?

Mr. MCDONALD. Not on pilots.

Mr. ONSTAD. I could tell you about what the industry average cockpit crew makes, which is about $110,000. That's taking the captain, the first officer, and the second officer wages and fringe benefits.

Mr. SKAGGS. And at Eastern what does a 727 cockpit crew make?

Mr. ONSTAD. I can't tell you the answer to that. I just happen to have the other number in my head. I could submit it for the record, but I just don't have it.

Mr. SKAGGS. Well, it is my impression that we're not just talking about the wage scales for your ground personnel, but your overall wage scale that has put the company into the predicament that it is in. Is that not correct?

Mr. ONSTAD. Not just wage scale, Mr. Skaggs, but also productivity. I don't know if you were here earlier when I gave certain productivity numbers on Eastern Airlines. For example, the Eastern pilots today fly far below the federal air regulations, and they are less productive than other pilots. In fact, that is why our proposal of $64 million give-back is, in fact, virtually all productivity increases. And still they don't fly up to the FAR regulations.

Mr. SKAGGS. Do you have those sorts of figures with regard to the rates for industry averages versus Eastern on your mechanics and baggage handlers?

Mr. ONSTAD. I'm sure we can get them. I didn't bring them with me today, but I'm sure we could get them.

Mr. SKAGGS. Is it your position that, again, it is a question of productivity rather than looking at abstract rate scale?

Mr. ONSTAD. I think it is a number of factors. It is productivity. The numbers I read earlier said that Eastern is about 100 percent less productive than the other carriers that I listed.

It is also a function of where Eastern started. American had $1 billion in cash when airline deregulation started. Our mutual friends at United in Denver had $1 billion in cash. Other companies had strong, protected hubs. Eastern started out in a weak position and has faced bankruptcy three times since 1978. That is not a healthy company over a long period of time.

Mr. SKAGGS. I would appreciate it, if it is all right, Mr. Chairman, if we could get that information for the record that can lay out those comparative wage scales for the relevant categories of workers.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Is that documentation that the company has readily available?

Mr. ONSTAD. Yes, Mr. Chairman, we could do that.

Mr. OBERSTAR. Is it very extensive—more than three or four pages?

Mr. ONSTAD. I don't know the answer to that. It shouldn't be, but I don't know the answer to that.

Mr. **Oberstar**. Keep it under ten pages.

Mr. **Onstad**. I'll do that.

Mr. **Oberstar**. We will receive that into the record.

[See page 238.]

Mr. **Onstad**. I also have been provided, if I may, Mr. Chairman, provide for the record the letter to the editor of the "Wall Street Journal" which we discussed at length this afternoon with various members. If we could make that a part of the record, I'd like to do that. It lays out the company's position in relation to Mr. DeFazio's questions and Mr. Bosco's questions.

Mr. **Oberstar**. Without objection——

Mr. **McEwen**. I have an objection. I'll hold my objection until such time as——

Mr. **Oberstar**. The gentleman objects to the receipt of——

Mr. **McEwen**. I understand, Mr. Chairman, that the information that Mr. Onstad presented on the agreement is being reviewed. Until such time as that review is completed, I'll have to object in the short run on any further submissions until that agreement is done.

Mr. **Oberstar**. That's fine.

Mr. **McEwen**. Thank you.

Mr. **Oberstar**. No problem with that.

The gentleman from Tennessee?

Mr. **Duncan**. Thank you, Mr. Chairman.

Mr. Onstad, I'm sorry I didn't get to hear all of your testimony. But is there a solution here short of the union giving you everything you want—the full $125 million in concessions? Is there a solution, from your standpoint?

Mr. **Onstad**. Well, we hope there is a solution, but I need to give you a little historical background, if I may. We started asking the IAM for $200 million in give-backs. We are down to $125 million. In the process, we have lost $500 million. Any normal businessman would go back and say, "Wait a minute. Don't keep cutting your offer. Go the other way."

You have to understand that we started at $200 million. We have lost $500 million. We are down to $125 million. They are still asking for a $50 million raise.

So we would like to figure out a way to solve this problem, but I wouldn't want to be the person on the Presidential Emergency Board trying to figure that out. That's a tough one.

Mr. **Duncan**. What is your predication about what is going to happen now? Presumably you know this situation better than most people. Let's take it in two steps: one, if we pass this Emergency Board legislation, and secondly, if we don't. What is your prediction as to what would happen in those two situations?

Mr. **Onstad**. We believe that Eastern Airlines does not have the cash reserves to make it through 60 days of Presidential Emergency Board. We have analyzed it. We believe it is a minimum of $200 million expense. Eastern simply doesn't have the cash to make it through that 60-day period. We're not even sure we can put the company back together to the status quo which that would require.

For example, we served notice on the pilots the other night that even if they come back to work we can't put this whole thing back in the air on day one. It has got to build up. All the reservations are gone. You just don't put 1,200 flights a day in the air with no reservations. That's like trying to run your grocery store with no groceries. It just doesn't work.

So we think the only chance for this situation to work is for everybody to look each other in the eye and figure out whether or not this company is going to survive. We think that is the only opportunity for Eastern Airlines. And, believe me, we are working very feverishly at that. Whether you call them negotiations or not, we have had discussions with the pilots over the past few days trying to figure out whether that is possible.

We can't understand why it is that if we are prepared to give them a fence agreement that guarantees them 222 airplanes, and what we want is not a cut in W-2 income but a productivity increase, why somewhere in there there isn't a deal.

Now, they are saying back to us that Texas Air won't guarantee 222 airplanes in bankruptcy. That would be an imprudent business judgment in our judgment because we don't know what the cash situation of Eastern would be under those circumstances.

So I certainly think there is the opportunity for an agreement with the pilots. The machinist situation is going to have to take some time to work itself out, I'm afraid.

Mr. DUNCAN. Thank you.

Mr. OBERSTAR. The gentleman from Illinois, Mr. Costello.

Mr. COSTELLO. I'll pass, Mr. Chairman. Thank you.

Mr. OBERSTAR. The gentleman from Georgia, Mr. Jones.

Mr. JONES. Thank you, Mr. Chairman.

Mr. Onstad, I just wanted some clarification here to sort of shake down everything we have been talking about. Is it your opinion and believe—as I think I heard you say—that it is your feeling that the unions are trying to break the company?

Mr. ONSTAD. I refer you to the 44 pages of documentation that are appended by my testimony that, yes, they are engaged in an attempt to take over the company.

Mr. JONES. A forced takeover?

Mr. ONSTAD. That's exactly right.

Mr. JONES. You may have answered this already, and you may not want to answer it, because I sort of lost it in there somewhere. But does the company lose more per day during a strike or during a mediation?

Mr. ONSTAD. Let me go through three periods of time. There was a period of time before February 1 when we were losing $1 million a day. There was the cooling down period, and we started losing money at substantially higher rates. And then we are losing money today at or more than we were during the cooling down period.

Mr. JONES. But you say that during mediation you'd be losing over $3 million a day.

Mr. ONSTAD. No. During the——

Mr. JONES. You said $200 million in 60 days. That's $3.3 million a day.

Mr. ONSTAD. That's right. I'm sorry. Mediations was the term that confused me. During the Presidential Emergency Board we—the $200 million number assumed there was no strike. We haven't had time to recalculate it, so that's why I have been very careful today to say it is a minimum of $200 million. But that assumed no strike. That's how expensive this process has been.

In fact, in my testimony you'll see that just the economic slowdown at IAM during that period of time would cost $70 million. It costs us $28 million during the month of March with an economic slowdown. We think it would be another $70 million during the Presidential Emergency Board.

Mr. JONES. So the answer is that you lose less money during the mediation if there was an Emergency Board?

Mr. ONSTAD. No, sir. We lost less money before our cooling down period.

Mr. JONES. I understand that.

Mr. ONSTAD. What has happened is that the travel agents and guys like yourself will say, "Wait a minute. This thing isn't working. Why should we go back and ride on Eastern Airlines?" To get people back up on there is going to be a very difficult process

So the $200 million that you are using as your base figure and dividing it by 60 days——

Mr. JONES. No. You were.

Mr. ONSTAD. I was. Right. But you got your $3.3 million from that. That was assuming that there never was a pilot strike. Now the inventory has emptied out. People have gone to Delta and American, etc. So we think the cost is far in excess of $200 million, but over the weekend we haven't had time to figure that one out. We have been figuring out other problems over the weekend.

Mr. JONES. Thank you very much.

Mr. ONSTAD. Thank you.

Mr. OBERSTAR. I think we have covered all the members except from the gentleman from Georgia, the ranking member.

Mr. GINGRICH. I appreciate very much your letting me come in at the end. I had to go to a Republican leadership meeting and talk about House administration. So I appreciate it.

I have reviewed your testimony and listened to the other questions.

I always am impressed with and learn from your testimony, Mr. Onstad. You are a very skilled advocate for your client. But I want to start by commending you.

It struck me as highly implausible three years ago that you had managed to drive the pilots into the machinists' arms.

Mr. ONSTAD. We thought so, too.

Mr. GINGRICH. And I really want to explore on the record for a couple of minutes, because I think this is a very, very serious matter. This isn't just a function of posturing between big labor bosses and a Republican President and maneuvering between a millionaire manipulator and the public's right to travel. It is also an issue of 30,000 people and their families and their hope for a future.

I am curious. I want to link together, first of all, the fact that the management style at Eastern, as I tried to suggest to your president three years ago, has now managed to do what was highly implausible, and I think that is on the record both in my office and in Miami.

Second, you said by your own testimony a while ago that it is worth $500 million in give-backs to get rid of you. I think there is something very profound about that. The unions are prepared and have been prepared and talking with other people to give back $500 million to get rid of Lorenzo. So I would ask you: What have you learned from that? In what way are you different today now that you have learned over the weekend that the pilots would walk? And now that it is very clear that your strategy has totally failed in terms of any rational response, what have you learned? In what way are you going to change?

Mr. ONSTAD. First off, I think that—were you here earlier, Mr. Gingrich, for my discussion of this memorandum from Joe Yurline and Randy Barber——

Mr. GINGRICH. Sure.

Mr. ONSTAD. On how to take apart Frank Lorenzo?

Mr. GINGRICH. It is clear that they are terrified of Lorenzo. We can stipulate that, as lawyers say.

Mr. ONSTAD. But what I want you to understand is that Lorenzo is the messenger, and every so often at Eastern Airlines you go out and shoot the messenger. You very carefully pointed out that Borman got shot. Lorenzo is being shot.

The issue is—and I can provide you quotes from Mr. Duffy which I didn't put in the record this morning—that that pilots' union, for example, wants to stop the spread of lower wages. They have been raising wages, raising wages, raising wages in the airline industry. There are only two significant places where there are lower wages—Continental Airlines and Eastern.

If they can take away half of Texas Air's air carrier organization, then there is less impact on existing pilot wages, and that is the objective of the air carriers' union. And Mr. Duffy has been quoted several times to that effect.

Mr. GINGRICH. But isn't it also true that the pilots, as late as last week, were trying to find a way to avoid striking?

Mr. ONSTAD. That's an interesting question. I'm not really competent to say exactly what they were trying to do as recently as last week.

Mr. GINGRICH. Let me frame that differently for a second, Mr. Onstad, so you understand where I'm coming from.

If we were sitting here holding this hearing with only the machinists on strike, your position would be dramatically stronger both economically and politically?

Mr. ONSTAD. That's correct.

Mr. GINGRICH. The fact is that the pilots have voluntarily exercised—and, again, I'm not a lawyer, so you may have to educate me for a second. But I thought under the Railway Labor Act it is clearly, explicitly legal to have a sympathy strike.

Mr. ONSTAD. It is if this were a sympathy strike. However, the point which I made earlier, there is a federal court hearing going on this afternoon, and except for the profanity I would quote into the record for you the statements by Jack Bavis, head of the pilots' union, saying, "I'm not striking for the IAM. I'm striking for ALPA." I have got page after page, videotapes, and also sworn affidavits which have been introduced since 2:00 this afternoon in Miami to that effect.

It is illegal to engage in self-help under status quo if it is not a sympathy strike. We believe the evidence is clear that they are not engaged in a sympathy strike.

Mr. Gingrich. So you have an airline now so racked by labor union/management disagreement that you have your most loyal union on a sympathy strike, which you think is probably illegal, but which is—what percent of the union members are honoring it?

Mr. Onstad. I'm not sure that is my most loyal union. I think Mr. Kerrigan's union is the most loyal union in this process.

I'm sorry. I lost the rest of the question.

Mr. Gingrich. What percentage of the pilots are honoring the——

Mr. Onstad. The vast bulk of the pilots are honoring it.

There is another factor which you need to keep in mind here. They changed their negotiating committee in the last few days of the negotiations. You see, there is a lot of internal strife in the union, themselves, between Mr. Copeland and Mr. Bavis and lots of others. They have got a terrible internal political problem which has complicated our bargaining process.

If I may go to what I think is the heart of your question, you're asking me really what went wrong over three years and how we got in this pickle.

Mr. Gingrich. No. I'm asking you to tell me about tomorrow morning, not about—over the three years I would suggest it is pretty obvious what went wrong.

Mr. Onstad. I'm not sure it is, and that's one of the points I would like to make.

If we had been, as the union suggested earlier today, under the National Labor Relations Act, I submit Eastern would not be at the critical juncture it is in today.

Mr. Gingrich. Well, let me just—I don't want to belabor this, but I think it is very important, and I think the fate of Eastern may depend on your learning curve here. I'm not sure, frankly, that you can afford, given Lorenzo's commitment, to learn very much.

The fact is: you are not under NLRB. You have hired more than enough lawyers who understood that from the opening day. And the strategy of breaking the machinists by going to a strike early was never going to work under the Railway Labor Act.

Now, you happen to be at a point where you have not only isolated the machinists against you, you have managed to have the other major union pile on, which makes it impossible to run the airline, which you have discovered.

You are now down to running the Latin American flights possibly and the shuttle occasionally.

My question for you is: having figured out that strategy didn't work, having said to us you don't want a Presidential Emergency Board, and having told us you can't afford to run the airline under the current circumstances, how, in the next three, four, five, six days—because it is going to take at least that long, even if Congress decided to act and even if the President decided not to veto it, it would take us at least four, five, or six days to do something. In what way is the Eastern management/Texas Air strategy for the survival of Eastern to save 31,000 families going to be different now that your last strategy fell totally on its face?

Mr. ONSTAD. Mr. Gingrich, without trying to negotiate in public, let me only say that there are efforts under way, even as I am sitting here this afternoon, to convey certain items of interest to the pilots. Beyond that I don't think it helps the negotiations to reveal what is going on.

But when I left my office this morning, that certainly was under way.

Mr. GINGRICH. Let me just raise one or two more questions—and I appreciate the Chair's indulgence.

I think it is important, because as much as I was willing to put in the record quotes from Charlie Bryan, and as much as I am willing to say the machinists did their share under Borman to weaken this company, I stated publicly and privately to you, to Mr. Lorenzo, and to Mr. Bates, every way I knew how to for three years that the strategy you were moving on was going to alienate your work force and going to put you exactly where you are today.

Let me just walk you through a couple of questions.

Let me ask you first of all: if you don't have a Presidential Emergency Board—and I, as you know, am disinclined to create one. In that sense, I am willing to let the free market system work a little longer—and if you can't afford a strike, which is what you're saying——

Mr. ONSTAD. Yes. That's right.

Mr. GINGRICH [continuing]. Then obviously you have now said in public, particularly to the pilots, you have to find a solution.

Mr. ONSTAD. What we have said to the pilots is that the fabric of this company is exceedingly fragile. It has been ripped very badly by this strike.

I will also say to you, Mr. Gingrich, that without federal subsidy Eastern Airlines will never again be what it was last Friday. Eastern has gone to that point financially.

Mr. GINGRICH. What do you mean "federal subsidy"?

Mr. ONSTAD. What I mean is: Eastern doesn't have the cash to be—whether there is an agreement tomorrow or not, Eastern doesn't have the cash to be the same size after the agreement that it was before last week. There has been so much damage to Eastern's reputation and to the lack of reservations on the books that Eastern just can't come back.

Mr. GINGRICH. So you have a transition period that you literally couldn't finance, in your judgment?

Mr. ONSTAD. That's right. Not at 100 percent of where Eastern was last Friday.

Mr. GINGRICH. Are you prepared—and, again, you are not going to negotiate in public and I am not a negotiator, but I am just curious for a second because I think it is so important to so many people in this country, to so many human families across this country. Are you prepared, at least with the airline pilots, to actually have an access to your books that they believe is trustworthy?

Mr. ONSTAD. Let me just ask that question, because that question has come up before. Mr. Gingrich, through the numerous law suits—and I noticed that Mr. Coopersmith is quoted quite often in the papers and has been here all day. I don't know if he is still in the room. Mr. Coopersmith is of a noted "Big 8" accounting firm and has been through our books time and time and time again. I don't believe there is a financial document that they haven't gotten discovery and haven't been through.

In fact, Mr. Coopersmith is one of those people who has said that, for example, we should have sold Kansas City, that Kansas City just didn't work at $70 million a year in losses. And so there is no question that the ALPA has been through our books ad nauseam.

Mr. GINGRICH. So there can be a common data base in the next 96 hours that you can work from?

Mr. ONSTAD. I am advised by counsel that Mr. Coopersmith already has it in his PC or whatever it is. He has got it on computer.

Mr. GINGRICH. Let me ask a couple of technical questions I don't understand.

During this period of time, is there any legal reason why Eastern or Texas Air cannot sell assets such as route slots or gates?

Mr. ONSTAD. During which period of time?

Mr. GINGRICH. The period that you are engaged in now? The strike and the——

Mr. ONSTAD. No different than we could under a Presidential Emergency Board, as I understand it.

Mr. GINGRICH. So one of your ways of getting liquidity would just be to keep selling down and shrinking?

Mr. ONSTAD. It has never been our preferred course, but it has been the course we have had to pursue.

Mr. GINGRICH. If Eastern filed for bankruptcy, would Texas Air's assets be drawn into a bankruptcy proceeding for the purpose of satisfying Eastern's creditors?

Mr. ONSTAD. I think that is not a question that I am competent, even though I am a lawyer, to answer. I'm not trying to duck the question, Mr. Gingrich. I just have not studied the question and don't know the answer.

Mr. GINGRICH. Could you submit—preferably before we go to mark-up of full committee, which will be on Thursday—a written answer to the question of whether or not, in a bankruptcy environment—what are the non-Eastern assets that might be accessible to creditors? I'm not asking you to do the creditors' work for them.

I think, again, that one of the equity problems I face as a conservative Republican is watching people who spent 25 years of their life for a company that was around a long time before Frank Lorenzo ever ready about airlines faced with what they believe to be, and what has been printed in the Atlanta papers—whether true or not—a series of charts that indicate that there are fire walls legally between Mr. Lorenzo's fortune and the fortunes of 31,000 families.

I think to the degree that we understand clearly what is at risk here it lets us make a more clear judgment of equity as politicians and as legislators.

Mr. ONSTAD. Let me make one observation, though I'm not qualified to do more than make the observation. I think you are familiar that there are certain laws on the books that when you own more than 80 percent of a company you have certain obligations vis-a-vis pensions. I think it should be noted that we do own 100 percent of the common stock of Eastern Airlines.

Mr. **Gingrich**. I'm assuming that at Texas Air's senior levels they have looked at the consequences of a potential bankruptcy, and if you could submit for the record, so we could have it before we go to full committee mark-up on Thursday——

Mr. **Onstad**. I will just have to check.

Mr. **Gingrich**. That would be very helpful. You're checking to see if it is physically doable? Or is there any legal reason you couldn't tell us that?

Mr. **Onstad**. I'm sorry?

Mr. **Gingrich**. There may be a physical problem of getting it all pulled together by Thursday, but is there any legal reason you couldn't get it pulled together?

Mr. **Onstad**. I don't know the answer to either of those questions, and I'm just going to have to go back and check.

Mr. **Gingrich**. Okay.

Mr. **Onstad**. I will give you an answer one way or the other.

Mr. **Gingrich**. Let me also ask: legally, how will Continental relate or not relate to what happens at Eastern, given that they are both owned by Texas Air?

Mr. **Onstad**. How does it relate? We own 100 percent of the common stock of Continental. My judgment is that—I'm not going to speculate on the record. I'm really not——

Mr. **Gingrich**. Just submit it in writing, if you don't mind. It would be very helpful. I don't want to get you involved in—again, I'm trying to be fair.

Mr. **Onstad**. I understand.

Mr. **Gingrich**. Maybe a little tough, but I'm trying to be fair.

Mr. **Onstad**. Thank you.

Mr. **Gingrich**. One last set of questions, then, and these you can submit for the record, but I would ask you to do so.

First of all, I would appreciate if you would submit for the record legal fees and lobbying fees paid by Texas Air and Eastern over the last three years.

Second, I would like to ask you to submit for the record what, if any, exposure Frank Lorenzo has if Eastern goes bankrupt.

And, third, I would ask you to submit for the record what expenditures Eastern made to put institutions such as Jet Capital and Texas Air that were management fees and other kind of fees because, again, one of the things I hear from my constituents and from other people who work with Eastern is this sense that the company is always poor, but then there is $1 million here and $5 million there and $7 million there and a penny per gallon. After a while, as someone once said, it begins to add up to real money.

Mr. **Onstad**. Much of that is covered in this "Wall Street Journal" article which has been offered for the record. But we will be glad to—I will take all of these matters under advisement and——

Mr. **Gingrich**. I understand.

Finally, let me just ask one last question, because I couldn't help but think of this as you went through your testimony earlier. Again, you are a very, very bright man, and you have always been reasonably candid with us while representing your client as faithfully as possible. Why not, given this grand strategy you outlined, just sell Eastern to the unions? What are you proving at this stage?

Mr. ONSTAD. The answer to that, quite candidly, is that they haven't put up any money to buy it. They have formed Grandview Acquisition Corporation. They have refused to come forward with money.

As I think Mr. Lorenzo was quoted in the "Wall Street Journal" quite accurately, they parade a lot of coconuts dressed up as buyers, but they haven't come up with a buyer. They have tried T. Boone Pickens, they have tried Carl Icon, they have tried J. Pritzger, they have tried other airlines, they have tried everything. But nobody—we were the buyer of last resort in 1986. Nobody else wants to buy this company.

Mr. GINGRICH. Are you suggesting there is no buyer of last resort after the buyer of last resort?

Mr. ONSTAD. That appears to be the case. We have, in the record, in the appendix to my testimony, 44 pages explaining their whole, long saga of looking for buyers. They have retained Lazard Freres, they have retained Scad and Arps, they have done all those things. Nobody else has come forward.

Mr. GINGRICH. Let me just close by saying I sincerely and really, from the bottom of my heart, hope that in the next few days your senior management will review the miscalculations that ended upon on Saturday and Sunday surprising a lot of your senior management, I think. And I hope in the next few days you will be able to sit down in private negotiations and, frankly, make this legislative process irrelevant and unnecessary.

I really do agree with you. I think the fate of Eastern Airlines as an entity that has a very long and very proud tradition is literally hanging in the balance right now. And I hope that you will, in closed-door without us politicians in the middle of it, sit down with a new level of candor, particularly with the pilots, and talk it out and see if you can't find some agreements that are real and that will work.

Mr. ONSTAD. If you will give me one more second I will tell you that this weekend has been a very difficult weekend for everybody at Eastern. Many of us haven't slept much, and we have been working very hard. What we have been through is not a pleasant experience.

Mr. GINGRICH. Thank you very much for testifying.

Mr. ONSTAD. Thank you.

Mr. OBERSTAR. We thank the gentleman for his very penetrating analysis and probing questions that have been most useful in illuminating aspects of this issue.

The gentleman from Pennsylvania, Mr. Kolter?

Mr. KOLTER. Thank you, Mr. Chairman.

Mr. Onstad, I would like to again thank you and the members of your panel for appearing here today. I suppose sometimes the interrogation seems hostile, yet we really are inquisitive and perhaps puzzled. No one on this committee wants to tear Mr. Lorenzo apart, and we are not happy because it seems that Eastern Air is on their knees. We are here to try to correct that situation.

But that adds to the confusion, because many times you have appeared here, or other executives of your company, Eastern Airlines. There seems to be a heavy concentration of your people insisting on wage cuts.

In watching television over the last several days, and watching other executives, and even watching you on my monitor before I came down to here, it seemed that there seems to be a certain amount of delight that Eastern has successfully lost $500 million. That's kind of perplexing and puzzling to me.

Mr. ONSTAD. First off, I think that you need to understand the frame of debate and the reference from our perspective.

When we went into Eastern we formulated a six-point plan: improve the marketing; cut the overhead—we cut it by $200 million; improve the maintenance of that company—we added $150 million a year in maintenance expense; improve the relationships with the travel agents; a couple of other points; and lower labqr costs.

In our debate over the last three years we have gotten through all of those factors. Every one of them has been successfully achieved but one. And that is why, when we get to this debate, when we get to this room today, we get to the point of dealing with the final point of the equation.

If you think it is fun to go borrow money at 17 percent because we are losing $500 million, it is not fun. We have borrowed money at 17 percent to keep Eastern Airlines going. It is not fun.

Mr. KOLTER. Mr. Onstad, are you telling this Congressional panel that if, in fact, the wages could be cut, that Eastern Airlines could be more successful in their ventures? Is that what you are trying to tell me here today?

Mr. ONSTAD. I have offered as a document for the record, which I don't think has been accepted yet, a recovery plan which specifies exactly that. It is a 10- to 12-page recovery plan which I invite you to study, Mr. Kolter, which we believe shows that Eastern can be very profitable if we can solve the final piece of the equation.

Mr. KOLTER. Well, you know what is confusing? I see other airlines represented here who are making money. In watching television yesterday, on one of the channels—it might have been CNN. I'm not certain—they showed an interesting chart itemizing the various pay schedules of various jobs in which Eastern Airlines was either at the middle or the bottom portion of that equation. And yet you are not making money and the other companies are making money. So that is rather confusing to me.

Mr. ONSTAD. Well, I had this discussion with the chairman of the committee earlier, and, as I showed, the productivity of Eastern Airlines per employee on an available seat mile basis is 1.1 cents, compared to the other airlines, all of which are above 2.2 cents. So the——

Mr. KOLTER. Would you repeat that again, please?

Mr. ONSTAD. Yes, sir. The productivity on the available seat mile basis, based on average dollar per employee of total compensation, is, at Eastern, 1.1 cents per ASM, whereas at United it is 2.2, American is 2.2, Continental is 2.3. And I'm suggesting to you that, on average, the productivity at those other carriers who are making money is twice that of Eastern Airlines.

Second, I also——

Mr. KOLTER. Sir, wouldn't that be a management problem?

Mr. ONSTAD. That's a function of the collective bargaining agreement. Now, it is the management's fault for entering into those at the same—if you accept the proposition of collective bargaining, it is a 50/50 problem. That's right. But that is clearly a problem.

You asked me how the top baggage handler at Eastern makes $80,230 a year W-2 pay, plus fringe benefits? Ask me how it happens. The way it happens is because you get ridiculous work rules that if the guy works one minute over he gets paid quick hours. I have forgotten how many quick hours and how much overtime he gets. And he gets selected holidays and double-time routine. The second guy made $79,000. Why do we have 130 baggage handlers making over $50,000 a year? Because somebody got screwed up along the way in terms of the collective bargaining process.

But from Texas Air's point of view, this is the first time we have had the IAM contract open.

Mr. KOLTER. Mr. Onstad, if that is your problem, mismanagement of your employees, perhaps you ought to go to school and learn what the other companies are doing, because I don't think they are having that kind of a problem.

Mr. ONSTAD. Well, they have had problems, but they have been able to adjust. They have had cash to adjust.

One of the important things, which I pointed out earlier, Mr. Kolter, is that Eastern has faced bankruptcy three times in the last nine years. The other carriers haven't. They started airline deregulation—American Airlines had $1 billion in cash in 1978; United had $1 billion in cash. They had computerized reservation systems that controlled large segments of the market. So the playing field was not level.

Eastern has been trying to deal with this question with having one arm tied behind its back, vis a vis its competitors, for the last nine years. And so far I think you can consult any expert in the airline industry and they would tell you that Eastern is the one carrier that has not adjusted to airline deregulation.

Mr. KOLTER. You know, Mr. Onstad, I have been here six years now and I don't recall the first time your people came before this committee, but it seems to be the same problem time and time again. I would certainly hope that after this year we could arrive at some conclusions here so that you can, once again, be a successful corporation and take your rightful place. But it is going to take more than just cutting wages. I can assure you of that, sir.

Mr. ONSTAD. As our recovery plan shows, we agree with you, Mr. Kolter.

Mr. KOLTER. Thank you.

Mr. OBERSTAR. Mr. Onstad, we appreciate it. This has been a very long day, a very long afternoon, and a very long testimony on your part. You have been very forthcoming and straightforward and professional in your response, and we respect and appreciate that.

The Chair would just like to observe that the witness submitted for the record a document that purported to be some sort of an agreement. I forget the exact title of it. But since it did not have a signature or an initial we are attempting to verify the authenticity of the document. If there is one that does have, as the witness said, a signature or an initial, then obviously we would submit it and include it in the record.

If you have such a document in your possession, we would be pleased to receive it; if not, we have gone to the original parties to ask for such a document, in which case the Chair would ask unanimous consent that at such time as the document can be verified and have a signature that it be included in the record.

Mr. **Onstad**. Mr. Chairman?

Mr. **Oberstar**. Does the gentleman from Ohio have any objection to that?

Mr. **McEwen**. Mr. Chairman, my reputation is well established as being one to be cooperative. I'm just not overly enamored with whoever's signature is on it. If it is the position of Texas Air or Eastern Airlines that they are under the assumption that this is a document that they are working from, even if it is totally invalid, even if it is totally erroneous, I think the reason that I wanted it submitted is not because this is a valid document as the outlined stated position of the parties. I just wanted it submitted as their testimony and their submission. And the testimony they submitted here is that they think that is the program that they are operating under.

Mr. **Onstad**. I can also clarify this very easily. I have sworn testimony in a court of law which authenticates this. It was produced by the unions, and I have sworn testimony from the record and court of law that it was signed by Mr. Bryan, and that testimony is by MaryJane Barry, head of the Flight Attendants Union at Eastern Airlines.

So if you like, I would be glad to submit the transcript from the Federal district court here in Washington that validates that as part of the record.

Mr. **Oberstar**. If you want to submit that part that includes the validation—my concern is accepting—I guess from my experience on the Oversight Committee—for the record a document that belongs to one party, or appears to belong to one party, without the opportunity for that party to rebut. I don't want to create that kind of a situation.

Mr. **Gingrich**. Would you yield, Mr. Chairman?

Mr. **Oberstar**. I yield to the gentleman.

Mr. **Gingrich**. Because of the background, I'd like to ask unanimous consent that both the document and the court testimony be submitted for the record, but that the record also have a place at that point for any of the unions that want to to add their comments or their reaction or their disclaimer.

Mr. **Oberstar**. Is there objection?

[No response.]

Mr. **Oberstar**. The Chair hears none. So ordered.

Mr. **McEwen**. Mr. Chairman, I've been more cantankerous in the last five minutes than I have been in eight years on the committee, and I'm more than willing to accommodate. Absolutely.

Mr. **Oberstar**. Not at all cantankerous. I think is is entirely appropriate in this process.

Again, we thank you very much for your testimony and appreciate your participation here, and we hope that through this process we can come to a resolution that saves the airline that is very dear to your heart and that of thousands of Eastern employees and customers.

Mr. **Onstad**. Thank you for your time.

Mr. **Oberstar**. Thank you.

[Mr. Onstad's prepared statement and supplements to testimony follow:]

TESTIMONY
OF
CLARK H. ONSTAD
VICE PRESIDENT
TEXAS AIR CORPORATION

BEFORE THE
HOUSE SUBCOMMITTEE ON AVIATION
HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

The central question is will H.R. 1231 accomplish what is intended -- will the appointment of a Presidential Emergency Board in the Eastern-International Association of Machinists (IAM) dispute bring about a resolution and, prevent secondary boycotts? These are very important questions which Eastern has pondered at length; and, indeed consulted some of the finest labor management experts in America.

Eastern's deliberations have been dominated by the impact of a strike on the men and women of Eastern, their families, Eastern's passengers and the communities served by Eastern. The present management of Eastern has been involved with this company for three years. During that time, Eastern's management has acquired a deep appreciation of the people of Eastern and the importance of the company. Enormous amounts of energy and resources have been put into attempting to resuscitate the company. For example, Eastern spends $150 million more per year on maintenance than was expended prior to its acquisition by Texas Air.

Also factored into Eastern's judgement about a Presidential Emergency Board is the long history of confrontation by the IAM with the company, dating back to 1980; the IAM's economic slow-down and outright vandalism over recent weeks during a "cool down" and, the financial condition of the company. Finally, Eastern is very cognizant that the normal collective bargaining process which applies to and works in all other industries except airlines and railroads is one where the contract ends and both parties are allowed to seek self help. In fact, this is the process which unions have held to be a key tenet of the collective bargaining process.

As people who have worked ceaselessly to make Eastern a viable economic entity, Easterns management's conclusion is that a Presidential Emergency Board will only be contrary to the result intended by H.R. 1231. The reasons include: (a) The nine year history of IAM actions on this property show no hope of an acceptable settlement being worked out by a Board; (b) the Airline Pilots Union (ALPA) and the IAM are engaged in a takeover attempt cloaked as collective bargaining; (c) to return to the status quo for a period of time is even more injurious to Eastern's tenuous financial position than a strike, potentially costing more than $200 million; (d) there is every indication that the IAM would continue its campaign of vandalism and economic slow-down if they were returned to work during the pendency of a Board; and (e) it is hard to see how a Presidential Emergency Board can improve on the otherwise generally accepted collective bargaining process. Beyond this, to capitulate in the face of the economic blackmail represented by the secondary boycott threat is to encourage its use in every airline labor dispute thus creating havoc in an industry that has seen only five strikes in the decade following airline deregulation.

Eastern's fate rests not in the dispute with the IAM but in the strike by the pilots. Eastern has demonstrated that it could operate successfully given a strike by the machinists. Eastern cannot operate without its pilots. Despite an offer of job guarantees, the bulk of Eastern's pilots are not returning to work at this time. Slowdowns at other airlines have shown that pilots who do not want to work can cause substantial damage. The key to the Eastern situation is for each Eastern pilot to examine the facts and then decide whether or not there will be an Eastern. No legislation short of Government subsidy can change that equation.

I. THE HISTORY OF THE EASTERN -- IAM RELATIONSHIP OVER THE PAST NINE YEARS HOLDS LITTLE PROMISE FOR A SUCCESSFUL PRESIDENTIAL EMERGENCY BOARD

On January 16, 1980, Jim Cates, President of District 100 for eight years before Charlie Bryan took office, sent out a bulletin addressed "Congratulations Charlie" and went on to say "Mr. Frank Borman, whom I have the utmost respect for, was the Company official in my opinion, that did the most for Eastern airlines in the 31 years I have had an employee-employer relationship. Mr. Borman, I'm sure, will continue to work with the leaders of this District for the interest of all."

Twelve days later, on January 29, 1980, Charlie Bryan issued a bulletin declaring: "EAL USES IRAN TACTICS" and goes on to say, "We continue to act in a professional and responsible manner in spite of the fact that EAL has resorted to illegal gangsterism in their labor relations policy." (emphasis added). Mr. Bryan went on to cite examples of "illegal terrorism" and states "We will not let the Company trap us with their criminal labor relations techniques" and finishes with "The gestapo tactics of Martin Ludwig Borman and his 'Nazi Torched Eastern Policy' will not work with this union leadership." This was only the beginning.

In October 1983, Eastern faced bankruptcy. The IAM demanded a 36 percent pay increase. Faced with only 12 days of cash, Eastern submitted to this irresponsible demand. In so doing, the willingness of the other workers to commit to other give-backs was seriously damaged.

In 1984, there was a brief truce between Eastern and the IAM as the company tried a "variable earnings plan." This effort was not sufficient to save the company.

Eastern again faced bankruptcy in February 1986. With bankruptcy papers drafted and lawyers on the premises, Frank Borman attempted to save the Company with wage concessions. All employees, union and non-union alike, except the IAM made wage concessions. The IAM not only did not grant concessions, but they forced the sale of the company to Texas Air.

Texas Air was aware of the need for change in all phases of Eastern when it bought the company. Following regulatory approvals and a closing of the purchase in late 1986, Eastern's new management proposed a comprehensive plan to remake Eastern as a profitable company. This plan included improvements in the marketing program, on-time performance, reductions in overhead costs, improvements in maintenance and reduced labor costs. Eastern also developed a growth plan called "The Airline of the 1990's" that showed what an airline with restructured labor costs could accomplish.

But perhaps most significantly, there was an unprecedented $100 million job retraining proposal. No American employer had undertaken such a proposal. Recognizing the difficulty faced by a baggage handler receiving total average annual compensation of $47,000 per year of transitioning to marketplace wage rates, Eastern made the following proposal -- Eastern would pay the baggage handlers wages and tuition in order for the individual to become an FAA licensed airplane and power plant mechanic.

If, at the end of this process, Eastern had enough demand, and it was anticipated that it would, these employees would have airplane mechanic jobs, a job suited for the future.

Eastern made real progress on all facets of its proposal except labor costs. Repeated attempts to negotiate were unsuccessful.

Eastern notified the IAM of its interest in negotiating as soon as Texas Air was given approval to acquire the company. These repeated entities were uniformly rebuffed by Mr. Bryan. In November 1987, both Eastern and the IAM petitioned the NMB to begin mediation. Unfortunately, the first mediation session did not take place until February 8, 1988. Between that date and January 1989, 75 joint negotiating sessions took place including 42 days in Miami, and special sessions for six days in Boston, 19 days in Cocoa Beach, Florida, three days in Key Largo, and five days in Savannah. A comparable number of additional sessions occurred with each party meeting separately with the mediator. Throughout these sessions, the IAM steadfastly refused to deal with the basic economic issues other than to seek a pay raise.

On July 1, 1988, Mediator Bickford stated that if the parties could not resolve the core issues in the ensuing week, further attempts at an agreement would probably be moot. At the request of NMB officials, Eastern prepared and presented to the IAM its "best" offer on July 8, 1988. In exchange for wage concessions, Eastern's proposal provided for:

a) a historic skills retraining apprenticeship program that would allow lower-paid baggage handlers and cleaners to receive full pay and be paid for training to become higher-paid mechanics, which would cost Eastern in excess of $100 million.

b) a guarantee against furloughs for four years for virtually all of Eastern's IAM-represented employees;

c) significant restrictions on Eastern's ability to subcontract, again thereby ensuring that the IAM would not lose this work; and

d) a guarantee of full-time positions for mechanics and technicians, and protection against reduction from full-time to part-time status for almost all employees (excepting only the most junior baggage handlers and cleaners).

In exchange for these job security guarantees, Eastern sought wage reductions that were: 1) consistent with its financial condition; 2) equitable as compared to the 20% wage reductions previously taken by Eastern's other employees; and 3) marketplace rates for the work performed by IAM-represented employees. Eastern's offer proposed the following wage structure, which would result in $161 million total labor cost savings:

	MECHANIC	BAGGAGE HANDLER
Present Rate	$18.83	$15.60
2/1/86 Rate Minus 20%	$13.92	$11.54
Eastern Proposal 7/8/88	$18-$16-$14*	$10.00

Thus, while weighted in favor of the skilled mechanics whose market-place rates are higher, Eastern's proposal essentially sought to place the IAM-represented employees where they would have been had the IAM joined all other employees groups in accepting a 20% pay cut in February 1986. The IAM was simply being asked to do what all other employees did in 1986, except that the rate of reduction would be less for mechanics than for baggage handlers because of the obvious differences in the marketplace value of their skills.

In response to Eastern's proposal, on July 13, 1988, the IAM gave Eastern a counter-proposal which sought $50 million a year in cost increases, including pay increases. The IAM was

* The great majority of Eastern's skilled aircraft mechanics, who hold and utilize FAA licenses as airframe and powerplant mechanics, avionics mechanics, etc., would receive $18 an hour while more junior and less skilled mechanics who simply change tires on non-aircraft equipment would received $14 an hour.

intransigent on wage decreases, the multi-skill level proposal, union representative benefits and wages, part-time employees, holidays, minimum overtime, and vacation entitlement to name just a few. The IAM insisted that it would never go below "industry standard" wages despite Eastern's clear inability to pay. The differences in the proposals represented $200 million annually.

From July 8 through the beginning of the "cooling off" period, there was essentially no movement at the bargaining table. On February 24, 1989, Eastern presented a mini package which the IAM again rejected. On March 2, 1989, the company submitted a complete settlement package (See Attachment I). This package reduced the company's request for concessions by $25 million. Again, the IAM rejected the offer.

In the evening of March 3, 1989, just hours before midnight Eastern submitted a third proposal. (See Attachment II). The IAM rejected this offer as well. During the entire cooling-off period the IAM never made one proposal or counter proposal. Indeed, we ask this committee to request from the IAM copies of all their proposals and counter proposals during the months of negotiations. It is obvious from the record that the IAM entered the negotiations with an agenda different from normal collective bargaining.

II. ONE MAJOR STUMBLING BLOCK TO ACHIEVING A RESOLUTION AT EASTERN IS THE UNIONS' LARGER AGENDA

To understand the union attitude at Eastern, both the (ALPA) and the IAM, it is essential to understand that both unions have a broader agenda.

For over three years, now, both the IAM and ALPA have been seeking through every available means, many of which Eastern believes to be illegal, to take over Eastern. This is a critical fact, because in all of these efforts, these two unions have used as the inducement to attract investors massive wage reductions. And to make the purchase price of Eastern more manageable, they have sought to destroy Eastern's business, thus driving down the value of Eastern, and presumably making Texas Air anxious to sell Eastern at a bargain basement price to staunch the red ink that union job actions and scare tactics produce.

The unions willingness to make wage concessions to buy the company, but not to enable its current management to make it viable demonstrates that Eastern's unions are fully aware of the central critical fact that dominates all others at Eastern: for Eastern to be a viable commercial entity, it desperately requires a major restructuring of its costs.

Union agitation for a Presidential Emergency Board is merely the latest variation on this take-over theme. The unions do not seek a Board in the hope that 60 more days might produce an agreement with Eastern's management. The only utility for the additional 60 days is to impose an additional $100 to $120 million of losses on Eastern to further their goal of buying Eastern on the cheap, in the open market, or out of Chapter 11 -- they appear to be indifferent which it is.

ALPA and the IAM launched an Eastern takeover strategy even before Texas Air acquired Eastern. The IAM began implementing the scheme to take control of Eastern in early 1986 when it retained the law firm of Skadden Arps, Slate, Meagher & Flom to advise them on their strategy for obtaining a controlling interest in Eastern's stock.

On about January 1, 1986, Bryan, on behalf of District 100, began urging Eastern employees to purchase substantial amounts of stock in Eastern. On January 8, Bryan proclaimed to IAM members that "in order to control our destiny, we must increase the share of the Company that we own," with the ultimate objective of "giv[ing] the employees a controlling interest in the airline." ALPA supported Bryan's scheme and actively solicited employee purchases of Eastern stock throughout the month of January 1986.

On January 8, 1986 defendants IAM and ALPA announced a campaign called "Eastern Evolution," which was designed to accomplish the following goals, among others:

> "(1) Achieve solidarity with all other employees to bring about a change in Management at Eastern and urge the Board of Directors to join us in achieving this gaol.
>
> "(2) Encourage each employee to buy as much Eastern stock as possible to give us real control over our destiny."

In March 1986, ALPA and the IAM retained the investment firm of Lazard Freres & Company to assist them in resisting the Texas Air acquisition of Eastern. Lazard Freres contacted prospective investors including Pan American Airlines, Braniff Airlines and the Pritzker Family. ALPA and the IAM offered wage and benefit concessions of over half a billion dollars to these outside investors in an attempt to secure their participation in their takeover scheme. Although negotiations with the named investors broke down, ALPA and IAM continued to seek financial assistance for a takeover throughout the summer and fall of 1986 and continued to urge ALPA and IAM members to vote against the proposed sale of Eastern to Texas Air.

In August, the IAM proposed an employee buyout of Eastern to the company's Board of Directors. The IAM's proposal was without financial backing and never approached a formal offer. By October 1986, ALPA and the Transport Workers Union ("TWU") (which represented Eastern flight attendants) endorsed defendant Bryan's proposed buyout during a meeting held in Washington, D.C. At that meeting an "Eastern Employee Coalition," was formed with the goal of obtaining an employee buyout of Eastern and of replacing its current management. ALPA and IAM agreed to substantial wage reductions totalling approximately $500 million annually in order to finance the proposed buyout, while refusing to offer such concessions to Eastern.

ALPA and IAM steadfastly refused to accept Texas Air's ownership and new management as illustrated by a review of press accounts since the fall of 1986. Time magazine quoted ALPA national president Henry Duffy as vowing to take on Texas Air with "every traditional labor practice there is." Time, "America's Most Arrogant Union," November 10, 1986. In a District 100 IAM bulletin, Bryan characterized the union dispute with Texas Air as an "all-out-war," and, according the the The York Times, union members began reading "The Art of War," written by Sun Tzu, a Chinese military tactician in the fourth century B.C. The New York Times, December 10, 1986.

The IAM national president William Winpisinger publicly stated that his job was "to marshal all of our resources to fight," and that his union will do whatever the circumstances dictate" to achieve its objectives--even to the point of driving Eastern into bankruptcy. Winpisinger proudly declared, "If I can wake up in the morning and think of another thorn I can stick in [Eastern's] lousy side, I'll do it." Atlanta Journal April 22, 1988.

In a March 1987 Eastern Pilots Communication Network videotape, Jack Bavis confirmed ALPA's "two-pronged attack" on Eastern management. According to Bavis, the current focus of the attach is to take over the airline--"to buy Eastern Airlines back from Continental and back away from Mr. Lorenzo and the [Texas Air] empire." On April 21, 1987 according to an Eastern MEC taped phone message, the Eastern MEC met in Miami to consider studies for "a possible buyout of Texas Air or Eastern."

The IAM's efforts to put economic pressure on Eastern and to extort its sale are equally apparent from a local Florida broadcast on WIOD, in which Bryan stated that the unions "look for Lorenzo's house of cards to come tumbling down." In that event, the unions would get the chance to have Eastern "employee-owned or certainly majority-owned by the employees." Significantly, Bryan states:"[T]he public out there thinks, oh, this is a labor-management dispute. This is a corporate investor dispute ...."

ALPA and the IAM have also pursued a fallback strategy: a takeover of Texas Air itself. One of the union's financial advisors, T. Boone Pickens, outlined a plan for union acquisition of Texas Air at a cost of $1.2 billion, with more than 25 percent of the financing to come from union pension funds. Under the scenario proposed by Pickens, the unions would also agree to major wage concessions to help finance operations and debt repayment, and borrow the rest. On April 12, 1988, the Eastern ALPA MEC met to consider studies regarding "the possible buyout of Texas Air or Eastern" (Eastern MEC Code-A-Message dated April 19, 1988).

The buyout efforts continued throughout 1988. The unions negotiated an agreement in the summer of 1988 for their pursuit of a buyout. Numerous investors were approached including Carl Icahn and Grand View Acquisition Corporation was formed. At the same time, ALPA and the IAM pursued a campaign designed to drive down the price of Texas Air stock. The program included besmerching Eastern and Texas Air's business reputation, an illegal work slow down, an illegal sick-out, a disinformation campaign aimed at Eastern's employees and interference with Easterns financial relationships. (See Attachment III).

This program is detailed in union documents such as "Proposed Initial Outline for EAL/TAC Coordinated Campaign" authored for the unions and which has been made available to the Subcommittee staff.

Today, it is Eastern's belief that the union strategy is to attempt to acquire control of the company by first driving it into bankruptcy and then attempting to use the bankruptcy processes to seize control. Unfortunately, the employees of Eastern are the victims of this strategy.

III. EASTERN'S FINANCIAL CONDITION IS SUFFICIENTLY TENUOUS THAT IT IS UNLIKELY IT COULD SURVIVE IN ITS PRESENT FORM, IF AT ALL, SHOULD A PRESIDENTIAL EMERGENCY BOARD BE APPOINTED

Eastern Air Lines has lost $1.4 billion on airline operations since airline deregulation was enacted in 1978. Eastern lost $462 million in 1988 before asset sales. Eastern loses an average of $1 million per day. These losses have had to be funded by asset sales.

Eastern had $400 million in cash as of 12/31/88. Since that time, its cash reserves has been depleted further. And in the past 34 days, this cash drain has been increasing. For example, since the "cooling down" period began, the cost of the economic slow down by the IAM at Eastern's maintenance facilities in terms of the cost of wasted labor and lost business (revenue less variable costs) has been over $25 million. Were there to be a Board appointed, this number would rise by at least another

$70 million for a total of $95 million. (This economic slow down is discussed in greater detail later on.)

With the beginning of the "cooling down" period, Eastern has also been experiencing cash drain from passengers booking on other flights or "booking away", the practice of some travel agents who plate away so as to protect any potential refunds and the costs of strike preparation plus the strike. Eastern simply does not have the financial staying power to suffer the imposition of a Presidential Emergency Board.

Some would argue that "Isn't everything back to normal once the Presidential Emergency Board becomes law?" The answer is most emphatically not! The recent experiences of travel agents and passengers will be fresh in their minds for long periods of time. This fact plus the general awareness of Eastern's financial plight would cause Eastern's revenues to be depressed for the period of the Presidential Emergency Board. Also, the costs of an IAM economic slow down which were identified above -- ($70 million) -- must be factored in. Previously, the IAM continued their economic damage to Eastern in the face of a strong court order. (See Attachment IV.) It is inconceivable that they would not do so in the event of a Presidential Emergency Board.

In sum, Eastern estimates that the imposition of a Presidential Emergency Board would impose a financial cash drain of at least $200 million; but most importantly, given the unprecedented nature of this matter, it may not be financially possible to return to the status quo. The only way to finance such a burden of at least $200 million is through the sale of significant cash assets which would in turn result in the laying off of thousands of employees.

IV. THERE IS GOOD REASON TO BELIEVE THAT THE IAM WOULD CONTINUE ITS PROGRAM OF ECONOMIC SLOW-DOWN AND VANDALISM IF A PRESIDENTIAL EMERGENCY BOARD WERE ENACTED

When it became apparent in January that the National Mediation Board would release the parties in the near future, the IAM embarked on a campaign of economic slow-down and vandalism. Attached to this testimony is the sworn affidavit of Roger Ferguson, Vice President for Maintenance Planning and Engineering for Eastern Air Lines (Attachment V.) Mr. Ferguson's affidavit was executed on February 27, 1989 in conjunction with an Emergency Motion to enforce a prior court order forbidding the IAM from engaging in an economic slow down and vandalism. Mr. Ferguson's affidavit shows that for January and the first two weeks of February, maintenance productivity dropped dramatically. For example, the work hours expended by the IAM to perform a "C" check of the aircraft increased 200 percent; as a result, service was being cancelled. Faced with this situation, Eastern sought and obtained a court order prohibiting a slow down. The result -- the work hours expended by the IAM on "C" checks for the next two weeks increased by 400%!

As the "cooling off" period came to an end, Eastern was faced to seek a court order sending the IAM members home a day early on paid leave.

The court found credible evidence which "strongly suggests that fires were started by IAM members". Many other acts of sabotage have occurred. While some involved vandalism, others involved serious safety concerns. The vandalism, while not jeopardizing safety is extremely expensive. For example, on Saturday night an employee triggered a "deluge" system, releasing over 50,000 gallons of pressurized water directly onto a Boeing 727 undergoing a "C" check. The interior of the aircraft was damaged and repair of the plane and other equipment in the hangar will cost in excess of $500,000. This occurred despite the fact that the court had already issued a preliminary injunction enjoining the IAM from "authorizing, calling, causing, inducing, conducting, permitting, continuing in, or engaging in, any strike, sit-down, concerted refusal to report to work or to accept duty assignments, including overtime assignments, or any concerted work stoppage, slow down, self-help, sick-out or disruptive behavior in any manner interfering with Easterns business operations."

The disruptions to Eastern's operations which occurred in the last 30 days could be expected to continue despite the imposition of a Presidential Emergency Board just as they have despite the court injunction. They would be serious even for a healthy company, but given the company's heavy losses over the last decade, and its critical financial conditions, they are crippling.

V. CONCLUSION

There is no realistic prospect that extending the 15 month mediation process for two additional months will help the parties resolve this dispute without resorting to self-help measures. To the contrary, as the previous discussions about the past fifteen months of fruitless negotiations eloquently attests, the Railway Labor Act's forced mediation process is futile because the parties are so far apart, and Eastern's debilitated financial position simply precludes it from meeting the IAM's exhorbitant demands.

An Emergency Board has authority only to recommend, not to impose a resolution of the dispute. In light of the distance between the parties, any such recommendation would undoubtedly be rejected, by one or both of the parties. Enormous pressure would then be focussed on Congress and the President for the enactment of legislation imposing a contract on the parties. Wholly apart from its questionable constitutional validity, settling labor disputes by federal statutes is hardly good public policy. The parties should be permitted to settle their dispute through resort to self-help measures without further delay.

In sum, convening a Presidential Emergency Board would hardly be an act of neutrality in this private labor dispute between Eastern and the IAM. Rather, it would be a violation of the normal collective bargaining process. Further, the convening of a Presidential Emergency Board virtually assures that Eastern Air Lines as we know it today, will not exist at the end of the 60-day period.

Attachment 1
Page 1 of 2

FINAL

EASTERN'S COMPREHENSIVE SETTLEMENT PROPOSAL
March 2, 1989 1:00 P.M.

At 1:00 p.m., March 2, 1989, Eastern presented the IAM a comprehensive settlement proposal to bring about a settlement and avoid a strike scheduled by the IAM for March 4th. Eastern's package settlement would resolve all issues and bring to a conclusion the negotiations which are now in their 18th month.

EASTERN'S PROPOSAL

- MECHANIC WAGE RATES:

  - PAY INCREASE - Eastern's proposal will give mechanics a 50 cent an hour increase in pay on October 1, 1993.

  - MECHANIC WAGE OPTION -

CURRENT TOP RATE	CURRENT PROPOSED TOP RATE	NEW PROPOSED OPTIONAL RATE
18.83 an HR.	$18 - $16 - $14	$16

Eastern's current proposal provides wage reductions varying from a low of 4% to a high of 25 percent based on giving skilled aircraft mechanics a rate of pay much higher than that paid to mechanics who only perform work on ground vehicles or other non-aircraft related work or work requiring less skill and ability

The optional mechanic wage proposal gives the option to the IAM of accepting the company's current proposal of giving the highest rate of pay to the most skilled mechanics or accepting the offer of an across the board $16 an hour rate of pay and increasing the rate of pay for the lowest paid mechanic in the current proposal by 14.3%.

  - Mechanic Wage Differential -

Mechanics will be paid 13% more than all other employees who took a 20% pay reduction over 3 years ago in February 1986.

- Baggage Handler Wage Rates:

  - Baggage handler wage differential -

Eastern's new proposal increases the pay rate of baggage handlers 16% from the current proposal. Baggage handlers will take no greater pay reduction than all other employees took three years ago; that is 20% from the 2/1/86 rates.

CURRENT TOP RATE FOR BAGGAGE HANDLERS	CURRENT PROPOSED TOP RATE	NEW PROPOSED TOP RATE
$15.60	$10.00	$11.54

Attachment I
Page 2 of 2

- PENSION BENEFITS:

	CURRENT MONTHLY BENEFIT RATE:	CURRENT PROPOSED "FREEZE"	"NEW" PROPOSED "FREEZE"
MECHANICS:	$35.00	26.00	35.00
BAGGAGE HANDLERS:	$30.50	15.00	30.50

Eastern's new proposal provides a "freeze" of future accruals for the duration of the contract in order to allow current underfunding to be alleviated and at that point fully restore the present monthly benefit rate which increases the current proposal for mechanics by 34.6% and 103% for baggage handlers.

- DURATION: Five Year Job Security Proposal

Current Proposal Expiration Date	"New" Proposal Expiration Date
December 31, 1991	March 2, 1994

Eastern's "new" proposal beginning March 2, 1989 provides five full years of job security for virtually all IAM represented employees and furthermore provides a strong financial incentive for Eastern to grow and avoid further downsizing to cope with its financial difficulties

- Eastern's job security proposal:
    - No furlough of any IAM represented employee hired prior to May 16, 1984 which provides protection for virtually all of Eastern's current IAM represented employees.
    - Free training at full salary for baggage handlers and cleaners to become mechanics and thereafter receive as much as a 60.3 percent increase in pay.
    - All mechanic positions will be full-time and there will be no part-time positions.
    - No non-mechanic employees hired prior to May 16, 1984 will be reduced from full-time to part-time which protects virtually all current employees.
    - Contractual guarantees that limit the use of sub-contractors and thereby protects IAM jobs, and a station classification system that ensures IAM jobs are potected at all desginated stations where Eastern continues to operate.

Attachment II
Page 1 of 5

MECHANIC AND RELATED NEGOTIATIONS
BETWEEN
EASTERN AIR LINES, INC.
AND
THE INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS
UNION SETTLEMENT PACKAGE PROPOSALS March 3, 1989*

*Restore and re-establish Eastern to that level of assets owned, operations, quality of service, and safety for the traveling public as well for its employees which were provided for in the attached Exhibit and have been previously discussed. All agreements will be guaranteed by Texas Air Corporation and by all of its Subsidiaries.

MECHANIC AND RELATED NEGOTIATIONS
BETWEEN
EASTERN AIR LINES, INC.
AND
THE INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS

UNION SETTLEMENT PACKAGE PROPOSALS March 3, 1989

Counterproposal to EAL Proposal #8 (Article 4 and Appendix 22): Amend Pushout Agreement as follows:

AIRCRAFT PUSHOUT AGREEMENT

1. At stations where Eastern's employees perform such push-outs, the push-out crew will consist of two (2) Mechanics (tractor operator) and one (1) Ramp Serviceman.

2. At non-maintenance stations during any four (4) month period in which the number of push-outs at a station averages more than eight (8) in a twelve (12) hour period or more than twelve (12) in a twenty-four (24) hour period, Eastern will perform push-outs with its own employees.

3. At any non-maintenance station where Eastern's employees are assigned to perform push-out, the push-out will consist of one (1) Mechanic (tractor operator) and two (2) Ramp Servicemen.

4. At "B" stations at times where no Mechanics are assigned and where the above formula does not require push-outs by Eastern employees, the push-out crew will consist of three (3) Ramp Servicemen. At locations where Mechanics now perform push-outs, there will be no change as a result of this paragraph.

The above guidelines supersede previous agreements on push-out crew complements.

FOR EASTERN AIR LINES, INC.	FOR INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS-DISTRICT 100
/s/ T. J. Matthews Senior Vice President Human Resources	/s/ C. E. Bryan President and General Chairman District 100, I.A.M.A.W.

Signed this _____ day of __________, 1989.

ARTICLE 5 - RATES OF PAY

*Modified January 19, 1989

19. 1. No increase in hourly wages commencing from the amendable date of current agreement (December 31, 1987) to December 31, 1988.

*2. Effective with the first pay period following April 1, 1989, there will be a 1.5% increase in Schedule "A" hourly wage rates.

3. Effective January 1, 1990, there will be a 2% increase of Schedule "A" hourly wage rates.

4. Effective November 1, 1990, there will be a 4.5% increase in Schedule "A" hourly wage rates.

5. Schedule "A" Hourly Wage Rates are attached to this proposal, setting forth new entry rates for employees hired after ratification date, etc.

23. (D) License Pay: License premium rates will be as follows:

Effective January 1, 1989 - Article 5(D)(1) Licenses held, 50 cents per license.
Effective January 1, 1989 - Article 5(D)(2) Licenses exercised, 60 cents per license.
Effective January 1, 1990 - Article 5(D)(1) Licenses held, 60 cents per license.
Effective January 1, 1990 - Article 5(D)(2) Licenses exercised, 70 cents per license.

IAM COUNTERPROPOSAL TO EAL PROPOSAL, ARTICLES 5 AND 6:

Modified January 19, 1989

Lead Pay will be eight percent (8%) hourly override of the employee's base hourly wage rate for his classification with the understanding that any employee who has held a lead position on or after January 1, 1986 will not have his lead pay reduced.

ARTICLE 6 - WAGE RULES

29. Mandatory training will not be scheduled for less than eight (8) hours on an employee's day off.

Attachment II
Page 4 of 5

ARTICLE 14 - OVERTIME

44. (b) Modify "On normal shift coverage, no employee will be forced to work overtime until all employees designated as available for overtime have been solicited according to low overtime hours. However, the Company must recognize their responsibility to insure proper manpower as required by company bids and daily rosters so that forced overtime situations will not exist.

ARTICLE 20 - MISCELLANEOUS

Employee Travel Policy:

53. Vacation Passses:

a. Change one year to five years.

b. Provide two free S-2 vacation passes to employee and pass eligible members after ten years active service.

55. Retirees: (a) Two free passes for all retirees and spouses per year.

ARTICLE 30 - DURATION OF AGREEMENT

63. Provide for a three (3) year agreement from amendable date of 12/31/87

APPENDIX 17

103(a)(b)(c)(d):

Union agrees to accept the same group insurance and dental plan programs as are provided to all other employees with the understanding there will be no co-payment cost to the employee.

*The company will provide all employees who are off the company's active payroll due to long term illness or disability free medical insurance coverage as is now provided for all active service and retired employees. This proposal is submitted as a result of a recent arbitration decision allowing the Company to charge medical insurance premiums to the above referenced employees who are unable to pay for such insurance coverage.

The System Board of Adjustment in Executive Session recommended that this issue be resolved during negotiations.

APPENDIX 13

103(c). Increase Class I to 37.00. Increase Class II to $32.50.

APPENDIX No. 13
OUTLINE OF IMPROVED RETIREMENT PLAN

1. The Improved Retirement Plan is revised effective January 1, 1989, and the revisions apply to employees covered by the Basic Agreement on and after January 1, 1988.

2. Benefit increases will become effective January 1, 1989, for Plan Participants in the employ of Eastern on or after January 1, 1988. Effective on that date, the Normal Retirement Benefit at age 65 for each year of Credited Pension Service (CPS), will be as follows:

	Benefit	Job Classification
CLASS I	$37.00	Mechanic and higher Schedule "A" pay rates
CLASS II	$32.50	All other classifications

APPENDIX 24

26. Modify Appendix 24, last paragraph, to provide overtime provisions for OTET in accordance with Article 14, Appendix 11, Systemwide Overtime Rules (see Appendix 24) below):

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

TEXAS AIR CORPORATION and	§	
EASTERN AIR LINES, INC.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
AIR LINE PILOTS ASSOCIATION	§	
INTERNATIONAL; EASTERN MASTER	§	
EXECUTIVE COUNCIL; INTERNATIONAL	§	
ASSOCIATION OF MACHINISTS	§	
AND AEROSPACE WORKERS,	§	
AFL-CIO; IAM DISTRICT 100;	§	Civil Action No. 88-0804
CHARLES E. BRYAN; JOHN J. BAVIS,	§	
JR., RUSSELL C. McGARRY, JERRY	§	
ALMASY, ROY H. ANDERSON, WALTER	§	
HABER, RICHARD IACINO, RONALD	§	
ORR, CHARLES R. PECCA, JR.,	§	**A JURY TRIAL IS DEMANDED**
ROBERT TAYLOR, LEROY D.	§	
WASHINGTON, EUGENE L. HOFFMAN,	§	
DANIEL J. VICIAN, RAYMOND	§	
H. S. WRIGHT, DONALD McCLURE,	§	
JERRY L. JACKSON, RONALD W. COLE,	§	
JAMES M. DILLARD, JR., JOSEPH	§	
P. DISTEL, RAYMOND M. WOOLFOLK,	§	
WRIGHT B. GEORGE, ROBERT A.	§	
BRESLIN, BRUCE F. CUSHING,	§	
JAMES C. BOST, CHARLES COPELAND,	§	
ALBERT J. GALLO, RICKY L.	§	
CHAPMAN, JOHN W. TIBBETTS,	§	
MALCOLM V. LANE, JR., BRIAN G.	§	
BUNN, MICHAEL F. DONOVAN, RICHARD	§	
L. FARRELL, MICHAEL B. KOHUT,	§	
GEORGE R. McCAMENT, JR., LUTHER J.	§	
HIPPS, JACK N. MOGUS, WILLIAM T.	§	
GAFFNEY, and JOHN A. CAPUTO,	§	
	§	
Defendants.	§	

COMPLAINT

IV. THE BATTLEGROUND SHIFTS—DEFENDANTS' UNLAWFUL SCHEME TO TAKE OVER OR DESTROY EASTERN.

99. Since at least 1983, it has been the objective of ALPA and IAM to acquire an ever-increasing interest in Eastern, and ultimately to obtain control. ALPA and IAM had this purpose for years before Texas Air acquired Eastern. That acquisition frustrated this cherished desire. Hence, after the acquisition, IAM and ALPA set out to divest Texas Air of Eastern, and, if possible, to acquire it for themselves. To that end and by illegal means, they have sought to cripple Eastern so Texas Air would decide to sell it, or, failing that, to drive Eastern into bankruptcy, and force Texas Air to relinquish control of it.

A. The Unions' Initial Attempt To Gain Control of Eastern

100. Since late 1985 defendants IAM and ALPA have engaged in a scheme designed to coerce Eastern management representatives into giving up control of the airline. Although defendants' tactics have varied through the years, the principal objective of their collective plan has remained unchanged—to acquire a controlling interest in the airline for the avowed purpose of ousting Eastern management.

101. Defendant IAM began implementing the scheme to take control of Eastern in early 1986 when it retained the law firm of Skadden, Arps, Slate, Meagher & Flom to advise defendants on their strategy for obtaining a controlling interest in Eastern's stock. IAM began pursuing its attempt to gain control of Eastern during a period when Eastern was facing severe financial problems, to the point of being

threatened with bankruptcy. Eastern's creditors made known their intention to foreclose on Eastern's debt of approximately $2.5 billion unless the company could negotiate changes to its collective bargaining agreements with substantial concessions in labor costs from all of its unions.

1. The Unions Join Forces To Conquer Eastern

102. On about January 1, 1986, defendant Bryan, on behalf of District 100, began urging Eastern employees to purchase substantial amounts of stock in Eastern. It is now apparent that the purpose of the activity was to obtain a controlling interest in the airline so that employees could replace the company's current management. Indeed, on January 8, Bryan proclaimed to IAM members that "in order to control our destiny, we must increase the share of the Company that we own," with the ultimate objective of "giv[ing] the employees a controlling interest in the airline." Defendant Bryan solicited Eastern employees to make stock purchases prior to filing a Schedule 13D with the Securities and Exchange Commission. Upon information and belief, ALPA supported Bryan's scheme and actively solicited employee purchases of Eastern stock throughout the month of January 1986.

103. On January 8, 1986, defendants IAM and ALPA announced a campaign called "Eastern Evolution," which was designed to accomplish the following goals, among others:

> "(1) Achieve solidarity with all other employees to bring about a change in Management at Eastern and urge the Board of Directors to join us in achieving this goal.
>
> (2) Encourage each employee to buy as much Eastern stock as possible to give us real control over our destiny."

In addition to encouraging employee stock purchases, IAM and ALPA consulted investment bankers in the hope of arranging the financing necessary for a purchase of the airline.

104. Not until January 30, 1986 did defendants IAM and ALPA file a Schedule 13D with the Securities and Exchange Commission disclosing their intention to increase employee ownership of Eastern and to replace Eastern's top management.

105. During January and February 1986, IAM repeatedly rebuffed Eastern's attempts to reopen negotiations on its collective bargaining agreements, thus making it impossible for Eastern to meet the demands of its creditors. IAM refused to make concessions necessary to avoid a sale or bankruptcy of the company, and took the position that it would not bargain with Eastern unless Eastern ousted its top management. IAM, together with ALPA, also publicly called for the removal of several of Eastern's top management officials.

2. Texas Air Offers To Acquire Eastern And The Unions Declare War

106. At a meeting of Eastern's Board of Directors held on February 23, 1986, defendant Bryan proposed that the IAM would agree to a wage concession of 15%, but only on the express condition that Eastern Chairman Frank Borman tender his resignation. As William Winpisinger, president of the IAM, put it in a February 22, 1987 interview, "Charlie Bryan was being faithful in terms of articulating what the members wanted: 'Don't bring anything back to the union hall unless Borman's head is part of the package.'" Eastern's Board of Directors refused to submit to IAM's coercive tactics and, facing default on its debt of approximately $2.5 billion, accepted an offer by Texas Air to buy the airline. Eastern's board correctly viewed the Texas Air acquisition as the only alternative to bankruptcy. Eastern's senior management believed that because the company had relatively little cash available to it, a bankruptcy filing would quickly have

led to liquidation of the company. The Texas Air acquisition allowed Eastern to avoid bankruptcy and the adverse business consequences which a declaration of bankruptcy would have produced.

107. Defendants thereafter engaged in hastened efforts to defeat the Texas Air offer and to take over the airline either through an employee buyout or a partial buyout with the assistance of outside investors. In March 1986, defendants retained the investment firm of Lazard Freres & Company to assist them in resisting the Texas Air acquisition of Eastern.

108. Lazard Freres, on defendants' behalf, contacted prospective investors including Pan American Airlines, Braniff Airlines and the Pritzker Family. Defendants offered wage and benefit concessions of over half a billion dollars to these outside investors in an attempt to secure their participation in defendants' takeover scheme.

109. Although negotiations with the above-named investors broke down, defendants continued to seek financial assistance for a takeover throughout the summer and fall of 1986 and continued to urge ALPA and IAM members to vote against the proposed sale of Eastern to Texas Air.

110. In August, defendant IAM proposed an employee buyout of Eastern to the company's Board of Directors. Defendants' proposal was without financial backing and never approached a formal offer. In October 1986, ALPA and the Transport Workers Union ("TWU") (which represented Eastern flight attendants) endorsed defendant Bryan's proposed buyout during a meeting held in Washington, D.C. At that meeting, defendants formed the "Eastern Employee Coalition," with the goal of obtaining an employee buyout of Eastern and of replacing its current management. Defendants agreed to substantial wage reductions totalling approximately $500 million annually in order to finance the proposed buyout, while refusing to offer such concessions to Eastern. In short, the price for union cooperation in cost reductions was new management which they could control.

111. Unable to secure necessary outside financing for an employee buyout, defendants repeatedly attempted to stall Eastern's special shareholder meeting, scheduled for November 25, 1986, to vote on the Texas Air offer, while continuing to pursue outside sources of financing. On November 6, Robert Callahan, president of TWU Local 553 in Miami, expressed the unions' philosophy, and their frustration: "This is our company. We made it . . . . It's ours and it's being robbed from us." On November 10, 1986, the Coalition filed a lawsuit in this Court seeking to block the proposed Texas Air acquisition and to delay the November 25, 1986 special shareholders meeting. At the same time, the Coalition made another purported offer to acquire the company.* Defendants' injunction was denied, and the Texas Air acquisition was approved by a majority vote of Eastern's shareholders at the November 25, 1986 meeting.

B. The Union's Concerted Efforts To Overturn Texas Air's Acquisition of Eastern

1. The Unions' Plan To Bring Texas Air to its Knees Begins

112. The defendants' continuing efforts to undo the Texas Air merger are evidenced by the Coalition lawsuit still pending in this Court in Hastings-Murtagh, et al. v. Texas Air Corp., et al. (Case No. 86-2378 - Civ, King). That suit, originally filed to enjoin the special shareholders' meeting called to consider the Texas Air-Eastern acquisition, alleged that the Eastern board had committed gross negligence and breached fiduciary duties in accepting the Texas Air offer. The suit also sought an injunction compelling the Eastern board "to consider a pending competing offer of plaintiff . . . which is clearly superior to the Texas Air offer. . . ."

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* While proclaiming that the company is by rights theirs, Eastern's unions have never been able to marshal the financial backing necessary to make a credible offer to buy it.

113. Defendants' steadfast refusal to accept Texas Air's ownership and new management is also illustrated by a review of press accounts since the fall of 1986. Time magazine quoted ALPA national president Henry Duffy as vowing to take on Texas Air with "every traditional labor practice there is." Time, "America's Most Arrogant Union," November 10, 1986. In a District 100 IAM bulletin, defendant Bryan characterized the union dispute with Texas Air as an "all-out-war," and, according to the New York Times, union members began reading "The Art of War," written by Sun Tzu, a Chinese military tactician in the fourth century B.C. The New York Times, December 10, 1986. Robert Callahan, then president of TWU Local 553, predicted in January 1987 that the unions would leave "scorched earth" to Texas Air. In April 1987, defendant Bryan vowed that his union would redouble its efforts to "unwind" the Texas Air acquisition of Eastern. Atlanta Journal, April 18, 1987. At a press conference on November 13, 1987, defendant Bryan renewed his appeal for an employee buyout of Eastern and called on Eastern's debtholders to support the move, claiming, "That debt is going to be in big trouble." "Eastern Air Lines is on a collision course with devastation and destruction. We are offering a viable alternative." Only two weeks ago, IAM national president William Winpisinger publicly stated that his job was "to marshal all of our resources to fight," and that his union "will do whatever the circumstances dictate" to achieve its objectives—even to the point of driving Eastern into bankruptcy. Winpisinger proudly declared, "If I can wake up in the morning and think of another thorn I can stick in [Eastern's] lousy side, I'll do it."

114. Defendants' continued efforts to overturn the Texas Air acquisition and to pursue an employee buyout of Eastern are further evidenced by a taped ALPA MEC "Code-A-Phone" message dated May 12, 1987. In that Code-A-Phone message, the ALPA MEC stated, "We have a real chance for our efforts to succeed and we will keep you

informed as much as possible as we proceed with our goal of overturning [Texas Air's] purchase of our airline and purchasing it ourselves."

115. Indeed, in a July 8, 1987 letter from defendant Bavis to Phil Bakes, Eastern's President and Chief Executive Officer, Bavis threatened, "There are only two solutions that I believe will stem the flow of pilots who are leaving both Eastern and Continental. Either Mr. Lorenzo would agree to sell Eastern (all of it) back to us, or he would agree to put together both airlines under one contract, one seniority list and one union." On about July 21, 1987, newspapers quoted Bavis repeating this demand to a meeting of Eastern pilots: "It's either he [Lorenzo] sells it to us one way or another, or put it all together."

116. In November 1987, defendant Bryan again publicly appealed to Eastern employees to support an employee buyout of Eastern. Bryan's communications with Eastern employees falsely described Texas Air management as "storm troopers" engaged in a "reign of terror," and employees as "captive victims in a high stakes game." With such introductions, Eastern employees were urged to support a revived employee buyout attempt.

117. In January 1988, ALPA representative Bob Breslin discussed ALPA's "battle for a Lorenzo-free airline" with ALPA members, stating "this will really be a happy new year in 1988 if its the year of the Lorenzo-free airline. All of us who have been doing our part in 1987 saw some significant gains in our battle, thanks to you." Breslin then asked ALPA members to send their contributions to the "Hostage Fund. . . . If a Lorenzo-free airline is your goal, as it is mine, I know you will be there for your fellow pilots."

118. In February 1988 defendants IAM and ALPA, in conjunction with TWU and the Industrial Union Department at AFL-CIO, announced a national campaign against Texas Air. The campaign is called APEAL: Abused Passenger and Employees Against

Lorenzo. The express goals of this campaign are "to stop worker and passenger abuse and to force Lorenzo either to settle with the unions on an equitable basis or to sell Eastern to another owner or to the employees", and "to focus maximum pressure on financial institutions who by dealing with Lorenzo must share the blame."

119. Significantly, defendants adopted a resolution stating that APEAL was organized because Eastern employees were "subjected to a reign of terror aimed at forcing them to further massive wage cuts of nearly half a billion dollars"—the same amount defendants' representatives voluntarily agreed to give in connection with their attempt to buy the company, in the fall of 1986.

120. In a March 1987 Eastern Pilots Communication Network videotape, defendant Bavis confirmed ALPA's "two-pronged attack" on Eastern management. According to defendant Bavis, the current focus of the attack is to take over the airline—"to buy Eastern Airlines back from Continental and back away from Mr. Lorenzo and the [Texas Air] empire." As recently as April 21, according to an Eastern MEC taped phone message, defendant Eastern MEC met in Miami to consider studies for "a possible buyout of Texas Air or Eastern."

121. Defendants' efforts to put economic pressure on Eastern and to extort its sale are equally apparent from a local Florida broadcast on WIOD, in which defendant Bryan stated that the unions "look for Lorenzo's house of cards to come tumbling down." In that event, the unions would get the chance to have Eastern "employee-owned or certainly majority-owned by the employees." Significantly, Bryan stated: "[T]he public out there thinks, oh, this is a labor-management dispute. This is a corporate investor dispute . . . ." Bryan further stated that he "would like to be a part of the decision-making process" at Eastern, through a position on the Board of Directors.

122. While defendant ALPA has described its previous relationship with the Borman management group as a "conventional" war, the current situation is, in ALPA's words, none other than "nuclear" war. As described in a February 29, 1988 bulletin to its members, this signifies that ALPA's current conflict with Eastern can be managed only if there are few fingers on the "button," i.e., that ALPA's strategies must be decided by high union officials without participation or control by the rank and file.

123. Buoyed by the fruits of a massive public relations campaign founded on falsehoods, Eastern's unions have become even more arrogantly open about the prize for which they are fighting, and the means of obtaining it. In an article published on March 20, 1988, the Washington Post paraphrased the comments of an unidentified "union strategist" to the effect that "the goal of the unions was to force Lorenzo to sell Eastern." The same article reported on the basis of interviews with union sources that the strategy was to delay as long as possible the federal mediation process now under way between Eastern and IAM, which must be exhausted before Eastern is permitted to impose changes in work rule or wage rates. In the interim, it is the objective of defendants to continue eroding the economic viability of Eastern on as many fronts as possible, while postponing the day on which Eastern can reduce the crushing burden of its labor costs. Though defendants know that reasonable concessions designed to reduce labor costs could make Eastern profitable, they have conspired to prevent that from occurring until ownership of the airline is theirs.

124. Nevertheless, confronted with the prospect that Texas Air will not succumb to their illegal campaign to extort the sale of Eastern, defendants have also pursued a fallback strategy: a takeover of Texas Air itself. One of the union's financial advisors, T. Boone Pickens, has outlined a plan for union acquisition of Texas Air at a cost of $1.2 billion, with more than 25 percent of the financing to come from union

pension funds.* Under the scenario proposed by Pickens, the defendant unions would also agree to major wage concessions to help finance operations and debt repayment, and borrow the rest. As recently as April 21, 1988, the Eastern MEC met to consider studies regarding "the possible buyout of Texas Air or Eastern." Eastern MEC Code-A-Message dated April 19, 1988. To optimize the conditions for such a takeover, defendants' attack on the viability of Eastern has been calculated to depress the market price of Texas Air's publicly traded stock.

125. Significantly, if neither of the buyout strategies succeeds, the unions are prepared to bankrupt both Texas Air and Eastern.

C. The Illegal Tactics Employed by Defendants to Crush Eastern and Texas Air

126. Beginning shortly after the consummation of Texas Air's acquisition of Eastern, defendants have engaged in a pattern of illegal activity designed to destroy Eastern. By creating extortionate fear of economic disaster, defendants have attempted to obtain ownership and control of Eastern from Texas Air. Through the same pattern of illegal activities, defendants have attempted to weaken Texas Air to the point where it too is susceptible to a takeover strategy that will fit the unions' pocketbook.

127. Though defendants have employed a host of destructive and illegal practices, the most damaging activities fall into five categories: (1) a campaign to defraud the public by smearing the business reputations of Eastern and Texas Air, in part

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* The pension plan gambit is reminiscent of Pride Air, an airline started by former Continental employees who were unwilling to accept the Texas Air acquisition of Continental. The start-up of Pride Air was financed by the employee pension funds that had been accumulated at Continental. The airline failed, and the employees' investment was lost.

through the use of interstate mail and wire instrumentalities; (2) interference with Eastern's ability to conduct business by means of an illegal work slowdown; (3) an illegal "sickout" campaign designed to interrupt Eastern's service; (4) a methodical disinformation campaign directed toward Eastern's employees which is designed to destroy their loyalty and dedication to the success of the airline; and (5) deliberate interference with, and coercion directed against, Eastern's financial advisers and lenders in order to prevent the company from weathering the unions' campaign of economic extortion. Not all defendants have directly participated in all of the activities described above. However, upon information and belief, these activities and their objectives have been planned in concert and have been coordinated by both union defendants.

1. Defendants' Use of Interstate Instrumentalities to Defraud the Public By Smearing the Reputations of Texas Air and Eastern

128. Defendants, acting in concert with others, have orchestrated a scheme to defraud the public by smearing the business reputations of both Eastern and Texas Air. By repeatedly and maliciously spreading false and defamatory accusations, defendants have deliberately inflicted serious injury on the businesses of both companies, without any justifiable privilege or adequate foundation in fact. The most insidious of these statements concern the safety of Eastern's aircraft. Feeding the appetite of the news media for "sensational" reporting, defendants have deliberately misled the public about the airworthiness of Eastern's fleet—much in the same way ALPA and IAM did during their campaign against Continental. In doing so, they have defrauded Eastern's passengers, and have thus maliciously interfered with Eastern's business. Further, defendants' abusive media campaign has fed on itself. By promoting deceitful accusations about the safety of Eastern, defendants have induced the news media (including television broadcasters) to join in an "Eastern bashing" effort, and have led the DOT and the FAA

to conduct costly investigations of the airline, all of which have further damaged Eastern's business. Indeed, that is the precise objective of the smear campaign—to drain Eastern of its economic vitality, and to continue draining it until either Texas Air delivers the company into union hands or Eastern is driven into bankruptcy.

129. Defendants' campaign of knowing distortions and falsehoods has been so intensive and so widespread that it is not possible to detail in this Complaint all of the defamatory accusations that defendants have published in an effort to deceive the public, the media, and the government. However, the following examples are illustrative:

(a) On March 31, 1987, defendant Bavis was quoted as charging that Eastern was "shaving on the margins of safety, and something is going to happen." Bavis further implied that Eastern's management was not only ignoring safety problems but was actually creating dangerous levels of pilot "stress" and was forcing sick pilots to fly, on penalty of termination.

(b) In April 1987, defendant ALPA distributed an "information sheet" to the press and public, which falsely charged that a recent FAA-approved change by Eastern in the calibration of altimeters "has serious safety implications," and could cause pilots to miscalculate aircraft altitudes. According to the leaflet, "We now have the recipe for a catastrophic accident." The union literature further claimed that Eastern's management was forcing the airline "to attempt to limp along on the razor-thin edge of safety," and was asking pilots "to wink at so-called 'marginal' problems," including alleged untimely maintenance.

(c) On about June 11, 1987, defendant Don McClure publicly declared, "We are watching this safety margin [at Eastern] shrink on a daily basis." Significantly, McClure said that he wouldn't blame consumers if they stopped flying Eastern as a result of the unions' "safety" campaign.* At the same time, ALPA distributed 250,000 postcards to its members, and encouraged them to send the postcards to federal officials complaining of alleged safety problems.

(d) On about June 22, 1987, defendant McClure publicly repeated his charge that Eastern's management "has been hacking away at the margin of safety until it has become razor thin." McClure further claimed that he knew of "a number of instances where the company has not tested critical equipment."

(e) In an August 3, 1987 article in U.S. News & World Report, defendant Ron Cole accused Texas Air and Eastern of being "blood thirsty cost cutters. They're going to kill somebody before the message gets through."* Cole also repeated the fictitious ALPA litany that Eastern was forcing pilots to fly planes which the pilots did not believe were airworthy, and to fly while sick.

(f) On October 15, 1987, ALPA representative James Sexton testified before Congress, "Very frankly, I predict disaster unless this 'bottom-line,' financially oriented group alters its course." Testifying before the same panel, defendant McClure accused Eastern management of coercing pilots to fly unsafe planes. ALPA has admitted that the hearings, and the appearances of Sexton and McClure, were part of ALPA's publicity campaign designed to call Eastern's safety practices into question.

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* McClure has had practice in vilifying Texas Air subsidiaries. He was actively involved as a spokesman for ALPA's phony safety charges in the union's unsuccessful strike against Continental.

* It is ironic that ALPA has designated Mr. Cole as one of its principal spokesmen on the issue of safety, and equally ironic that Mr. Cole has used that position to vilify Eastern's safety and maintenance practices. Mr. Cole, a former Eastern pilot, was terminated in February 1988 for failing to follow required cockpit/checklist procedures regarding equipment conditions on an Eastern flight from Miami to Guatemala City in December 1987 (on which he served as first officer) and for falsely blaming another party for his dereliction once he was confronted with it.

(g) In the October 22, 1987 edition of the Miami News, defendant Cole alleged that Eastern pilots are "under stress and have shoddy planes."

(h) In an October 27, 1987 Wall Street Journal article, Cole alleged that Eastern management had "refused to correct, or even address, the safety related problems" at the airline. Cole also claimed that "maintenance on this airline is abominable," and that Eastern had "excessive unrepaired parts" and had put "emphasis upon on-time departure at any cost."

(i) Upon information and belief, in December 1987, ALPA publicly disseminated a phony Continental Airlines ad, offering 5,000 free frequent flyer miles for those passengers who would die from a crash.

(j) In February 1988, ALPA placed large ads in a nationally circulated newspaper, accusing Eastern of "deteriorating safety standards." The ad alleged: "There have been many documented instances in the past few months alone of management supervisors attempting to force pilots to take aircraft with inoperative altitude alert systems, inoperative cockpit voice recorders, inoperative generators, inoperative weather radar, engines that couldn't reach takeoff power and aircraft in excess of gross takeoff weight." ALPA separately mailed copies of this ad to travel agencies throughout the country in an obviously calculated effort to damage Eastern's business.*

(k) On March 7, 1988, the Miami News quoted defendant Cole, addressing alleged failures to report maintenance correctly: "We're concerned that some folks [at Eastern] are cutting corners and doing things that aren't legal." During the same month, ALPA representative John Knudson was quoted in the Denver Rocky Mountain News as saying that, "The primary focus of our new management seems to have strayed from safety to cutting operating costs."

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* In an April 1988 edition of the "Checklist" publication, Eastern MEC reprinted a number of letters that ALPA had received from passengers in response to this ad. One letter, proudly republished by Eastern MEC for the benefit of Eastern pilots to whom the "Checklist" was mailed, stated: "Your USA Today ad with regard to Eastern's safety has certainly convinced me. All of my employees will now opt for other airlines and Eastern will no longer be used as a carrier for any of our frequent trips. I don't think anyone will ever again feel comfortable flying Eastern."

(l) In the February-March 1988 edition of the "Checklist," published and mailed by the Eastern MEC, Jerry Loeb of ALPA asserted that Texas Air and Eastern had lied to Congressional panel members.

(m) On March 8, 1988, defendants Bryan and Cole appeared on a radio talk show on station WIOD in Miami, along with Marty Urra, president of IAM Lodge 702 in Miami. Together, these IAM and ALPA representatives engaged in a mutually supportive display of vilification against Eastern and Texas Air that was unprecedented, even according to the standards for disparagement previously set by the unions. To mention only a few examples, Bryan falsely made the following false and defamatory assertions:

— that Frank Lorenzo was "brutalizing his employees and his work force" at Eastern and that employees were "constantly being fired";

— that an Eastern ramp serviceman named McDowell had committed suicide after being "forced into retirement" by Eastern, and that this was an example "of the enormous tragedy of what Frank Lorenzo is doing to people and his brutalizing of people";

— that Eastern maintenance supervisors had overruled IAM mechanics and had improperly put a damaged engine on a plane; that the engine "blew up and came unwound because of the damage that had been done to it"; and that Eastern had then "tried to cover it up and say it had nothing to do with it";

- that an Eastern maintenance supervisor in Kansas City told IAM mechanics to "ignore" wrinkled metallic skin on the fuselage of an Eastern aircraft, with the consequence that there was "major structural damage to that aircraft, that it was actually coming apart in the air."

On the same program, defendant Cole made the following false and defamatory statements:

- "I think you will recall last year there was a military reserve pilot that crashed his military fighter on weekend reserve duty and was killed, and the government's report came out relating the facts as to the cause of this accident, directly and indirectly related to the stress and anxiety that this man was experiencing at work at Eastern";
- "There was another incident where one of our pilots was commuting to work in his private airplane to Tampa. Eastern had just imposed a new unrealistic sick leave policy on pilots, and this gentleman was afraid of being late for work, so he took an extra chance that he shouldn't have taken and he crashed his airplane and was killed";
- "We were mentioning earlier along the lines of some of these incidences that relate to this falsification of aircraft records. This situation incidentally has gotten so serious in the industry, I think particularly with the airlines Mr. Lorenzo operates under Texas Air Corporation."

(q) On April 8, 1988, the ABC prime time television news program "20/20" provided members of ALPA and IAM with a forum to further slander the business reputations of Eastern and Texas Air. The most insidious of these false statements were uttered by unidentified pilots and mechanics, speaking in the shadows through muffled voices in order to free themselves from any responsibility for accuracy. For example, one unidentified ALPA pilot stated, "If they have not already died at Continental, people just may die in the future." Another pilot charged that he had been grounded for refusing to fly an unsafe plane. Unidentified IAM mechanics accused Eastern of "playing Russian roulette" by taking short cuts and flying aircraft despite maintenance problems. The same mechanics further asserted that Eastern management had directed its mechanics, "Don't follow the manuals." Another IAM mechanic claimed that Eastern had returned an A-300 engine to service after it had ingested an air conditioning hose, causing the engine to "explode" within days after the mechanic spoke to the network reporters. Yet another unidentified mechanic asked, "Is it going to take a catastrophe, hundreds of people being killed, in order to bring [Eastern's problems] to light?" Upon information and belief, IAM and ALPA encouraged and arranged for these interviews, and are in large part responsible for the defamation which resulted.

(r) On the same program, defendant Bryan repeated the IAM and ALPA litany that Eastern was compromising safety to cut costs. "We're on the ragged edge right now of having some enormous number of tragedies. The risk is going to continue escalating."

130. The statements identified in the preceding paragraph are defamatory, false, and fraudulent. They were made as part of a conscious and concerted scheme to defraud the public through the use of interstate instrumentalities for the purpose of ruining the business reputations of Eastern and Texas Air. Moreover, many of these communications were made for the express purpose of threatening injury to plaintiffs' property and reputation, with the intent to extort a pecuniary advantage, namely to force Texas Air to relinquish its ownership of Eastern and deliver it into the hands of ALPA and IAM. The disparaging statements quoted above were disseminated to the

public through the use of radio and television media, press releases disseminated through the mail or by wire services, or by newspapers, copies of which were also distributed through use of the mail. Even in those instances where defendants did not themselves personally disseminate their fraudulent statements through the use of interstate instrumentalities, they acted with the knowledge and expectation that the use of the interstate wires and mails to transmit those false statements would follow in the ordinary course of business, or where such use should have reasonably been foreseen. In fact, defendants' smear campaign has inflicted serious economic injury on plaintiffs' business by undermining the integrity of Eastern itself (and Eastern's sister company, Continental), and by driving away passengers who have been led by defendants to fear for their safety.

131. Defendants' campaign of corporate defamation is not only maliciously motivated, it is also utterly contrary to fact. Though defendants have repeatedly claimed during the last year that Eastern and Texas Air have ignored safety in order to cut costs, the fact is that in 1987 Eastern's maintenance and engineering expenditures exceeded half a billion dollars—among the highest in the industry—despite a 1987 loss of $182 million. Eastern's safety expenditures represented an eight percent increase over 1986, despite a reduction in fleet size and number of miles flown. Significantly, statistics for the third quarter of 1987 demonstrate that Eastern invests a higher percentage of its total expenses on maintenance (14.4%) than any other U.S. airline. Measured another way, during the same period Eastern spent 1.18 cents per available seat mile on maintenance—75% more than Delta, 44% more than American, and 36% more than United—indeed, more than any other U.S. carrier. During 1986 and 1987, Eastern reinspected all 286 planes in its fleet for all airworthiness directives, which covered almost 300,000 items and required 140,000 man-hours, at a cost of $15 million. Last year Eastern also made an unprecedented reinspection of every key aircraft part.

both on planes and in inventory. Further, maintanance and engineering training hours have more than doubled since 1985—from 141,000 to 320,000 in 1987.

132. ALPA's claims that Eastern pilots have been "grounded" for refusing to fly allegedly unsafe planes, which were given the most widespread publicity by the "20/20" program mentioned above, are also spurious. With only a single exception, no Eastern pilot has lost one day's pay for refusing to fly an airplane he alleged was unsafe. ALPA's pilots, however, like all other employees, must be held accountable for their decisions. When Eastern's pilot management—themselves experienced and dedicated Eastern pilots—have strong reason to believe that a pilot's refusal is for ulterior, non-safety related reasons, he may be removed from flying status with pay while the matter is investigated. This was true in the case of the captain interviewed on "20/20" who refused a flight assignment on the Eastern Shuttle because an altitude alert system was inoperative. In fact, consistent with FAA regulations, the aircraft had two other completely functional altimeters to gauge altitude, and no federal law or regulation prohibited operation of the aircraft under the circumstances. Other pilots have flown legally and safely under these circumstances.

133. The IAM's claim, also reported on "20/20," that Eastern returned a damaged A-300 engine to service, which caused it to "explode," is equally false and misleading. Though the engine in question had ingested a plastic hose, the engine was inspected while on the wing and was determined to be safe. As an added precaution, however, Eastern management ordered the engine removed from the plane, partially disassembled, and thoroughly inspected at the engine service center. A mechanic did record minor nicks on less than five of the 1073 blades on the compressor, but this was certified to be completely within the manufacturer's specifications. When the engine failed on takeoff four months later (not five days as "20/20" indicated), the failed part was the turbine—not the compressor, as claimed by ABC. The compressor has been

examined by the FAA, the National Transportation Safety Board, and the engine manufacturer, General Electric. All agree that the turbine failure was unrelated to the ingestion of the hose and that the compressor remained within specifications even after the turbine failure.

134. The unions' persistent claim that Eastern management has "brutalized" Eastern's employees is another falsehood. For example, though the unions complain about Eastern's new sick leave and absentee policies, they fail to note that before Eastern adopted these policies last year, its sick leave usage was much higher than the industry average. In 1986, absenteeism cost the company $70 million. Eastern's reasonable and necessary response was merely to introduce new policies comparable to those in place at other carriers such as United. Similarly, while it is true that Eastern has called for reductions in the wages of many employees, that action is necessary for the survival of the airline and the preservation of jobs for more than 30,000 employees. Eastern has already implemented cost-cutting measures (including the streamlining of management) which should save at least $160 million. In addition in 1986 Eastern implemented a 20% reduction in the salaries of all of its employees (including management), except employees represented by the IAM, which refused to accept the pay cut. (Since then, IAM members have enjoyed an eight percent increase in pay.)

135. The IAM's reaction to calls for wage concessions is to complain that Eastern management is "victimizing" employees, though IAM shirks from attempting to defend directly a wage structure that pays baggage handlers nearly $16 an hour, for an average annual compensation of $47,000 in pay and benefits.* Lost in the IAM's

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* IAM's national president, William Winpisinger, has offered the following justification for inflated wage rates such as these: "What the hell, when you've got a country spending $300 billion a year on bombs, bullets and airplanes, you know you've got to get a piece of the action." "IAM Chief Winpisinger has no apologies." Miami Herald, Feb. 22, 1987.

inflammatory rhetoric is the fact that Eastern has proposed an innovative retraining program designed to cushion the impact of wage reductions on nonskilled IAM members. This proposal would give those employees an opportunity to train for skilled mechanic positions in order to earn salaries comparable to what they are now receiving, while continuing to receive pay during the training process. The substantial cost of the plan demonstrates Eastern's commitment to an equitable transition for unskilled workers. If only 2000 of the approximately 5000 eligible nonskilled workers participated, the cost would be $100 million. Nonetheless, the IAM has refused even to consider this proposal, and has instead sought out the national media to complain about employee "brutalization."

136. Particularly in light of the facts discussed above, it is both disheartening and outrageous that the defendant unions have so viciously and unfairly attempted to destroy the good name of the airline for which their union members work, all in order to further the coveted objective of the union hierarchy: to coerce Texas Air into selling Eastern to them.

2. Defendants' Extortionate Slowdown Campaign

137. Beginning in late February 1987, defendants ALPA and Eastern MEC have systemically encouraged Eastern pilots to engage in an extortionate work slowdown under the guise of a "Max Safety" campaign. Although couched in terms of safety, the true goal of ALPA's "Max Safety campaign" is to inflict economic injury on Eastern, and by doing so, to coerce Texas Air into selling Eastern. These actions have occurred at the instigation, endorsement and direction of both the national ALPA and the Eastern MEC, with the approval of the other defendants.

138. ALPA has communicated the goals of the max safety slowdown to Eastern pilots through a cartoon character it calls "Max Safety." Max Safety advises pilots variously to "Live by the Rules," "Fly by the Book," and "Take the Time to Be Sure." These messages are the time-honored and well understood code phrases an extortionate work slowdown.

139. Indeed, the format of the ALPA slowdown in the form of a "Max Safety program" at Eastern follows a pattern established by ALPA at least as early as 1968, as more fully described in an ALPA report entitled "The Slow-Down As a Negotiating Tool," authored by defendant Max E. Davis. That report described the slowdown device as follows: "The slowdown, call it what you will—'withdrawal of enthusiasm,' 'lay aside enthusiasm,' 'safety program,' 'withdrawal of the spirit of cooperation'—is essentially an economic weapon against the Company." (Emphasis added.)

140. ALPA's slowdown has been carefully planned over a period of time, as demonstrated by a February 11, 1987 survey of Eastern pilots by ALPA. That questionnaire asked Eastern pilots "[w]ould you support a job action at this time, such as a. Fly by the book. . . ." Further, in a March 10, 1987 newsletter from defendant Bavis to Eastern pilots, defendant Bavis outlined ALPA's plan to obtain Eastern's adherence to the union's objectives, including "Comprehensive max. safety campaign on Eastern."

141. ALPA has distributed stickers to Eastern pilots with the Max Safety cartoon character and Max Safety slogans. The stickers reveal the true goals of the max safety campaign. One Max Safety sticker states: "WARNING: INFLAMMATORY STICKER Contact Billy Stephans [sic] for Removal (305) 873-2500." Captain Stephens is Eastern's chief management pilot. Inviting Eastern pilots to harass him has no honest relationship to safe aircraft operation. Implicit in another sticker, "SAFETY PAYS BIG DIVIDENDS," is a message to pilots that by participating in the max safety slowdown,

they can reap economic rewards from the pressure exerted by a work slowdown in the name of safety.

142. The coercive intent of the slowdown is clearly illustrated by yet another of the stickers distributed by ALPA, which asks "Had Enough Yet? Shove It Up Their REAR." Acting at the encouragement of ALPA, certain union pilots have placed these stickers in aircraft cockpits, in some instances obscuring instrumentation. This action led the FAA in July 1987 to direct that Eastern "remove all unauthorized decals from company aircraft and initiate measures to preclude these decals from being replaced." While defendant Bavis publicly claimed that he had not encouraged pilots to put stickers in the cockpit, internal ALPA documents confirm that the union's Miami council was still encouraging its members to do so as late as December 1987.

143. The true purpose of the max safety program was also revealed in an April 2, 1987 memorandum from the Chairman of Eastern MEC's Communications Committee to Eastern pilots, asking "for support through maximum safety efforts, informational picketing, legislative efforts, and other actions, leading to job actions if necessary to obtain pilot security and a future worth working for."

144. In the April 2 memorandum, ALPA also asked, "[a]s an ongoing and visible show of support to the Plan . . . that every Eastern aircraft be taxied with landing and taxi lights on." Safe aircraft operation does not require that landing and taxi lights be left on continuously. Indeed, ALPA recognizes that its recommended tactic is inherently unsafe by cautioning against its use at night, when other pilots might be blinded by the inappropriate use of taxi and landing lights. The misuse of taxi and landing lights can also create an unsafe situation by causing them to burn out sooner than normal.

145. On April 23, 1987 one ALPA pilot, after landing an aircraft, was observed taxiing quite slowly, with taxi lights on. When questioned about the incident, the pilot apologized and acknowledged the real purpose of ALPA's "taxi light direction"—he said he was "participating in a slowdown."

146. ALPA dropped any pretense that the max safety campaign is directed toward airline safety in a Max Safety leaflet emphasizing that the defendants' actions are causing "flight cancellations and delays." In that leaflet Max Safety states:

> Have you ever stopped to think that maybe Max Safety isn't one person at all, but a group of senior pilots who got together after seeing the mess we were getting into and decided to do something about it. Maybe we all threw some money in the pot to put the program together. After all, someone was there for us when we started climbing the ladder a few decades ago, *helping us attain an enviable lifestyle*. It's only natural that those of us who get the most out of it put the most back.

147. A "withdrawal of enthusiasm" or "safety campaign" by defendant ALPA similar to the instant max safety campaign was held to be illegal in *Texas International Airlines, Inc. v. Air Line Pilots Association International*, 518 F. Supp. 203 (S.D. Tex. 1981).* There, as here, ALPA encouraged pilots to write-up mechanical defects in the name of safety. The court found that ALPA's actions were motivated, not by genuine safety concerns, but by a desire to disrupt carrier operations in an effort to coerce the airline to agree to ALPA's bargaining proposals. Here, the unions' efforts are aimed, not at any legitimate collective bargaining objective, but at coercing Texas Air to relinquis control of Eastern, or, failing that, simply to destroy Eastern in order to preserve the cost and fare structure of an oligopolistic industry.

148. ALPA's slowdown plan involves a variety of coercive tactics aimed a inflicting economic injury on Eastern and Texas Air, including 1) increased reporting

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* Texas International, owned by Texas Air, was subsequently combined wi Continental.

supposed aircraft mechanical problems; 2) refusal to fly aircraft which meet the rigid FAA standards; and (3) a mailing campaign to the Federal Aviation Administration ("FAA"), Department of Transportation, National Safety Board, and Congress, designed to harass Eastern by instigating numerous time-consuming federal inquiries into Eastern's operations.

149. Increased Maintenance Write-Ups. FAA and Eastern safety regulations require that equipment on an aircraft which is not operating properly be written-up, i.e., be reported. Each plane has a maintenance log book, in which the pilot notes items needing repair. Before a plane can depart, a licensed mechanic must "clear" any items written-up in the log book, either by making immediate repair or replacement or by scheduling repairs for a later time. If the item cannot be cleared and no replacement aircraft is available, the flight must be cancelled.

150. Since the commencement of ALPA's slow-down, the number of maintenance write-ups by pilots has increased significantly, pursuant to the unions' plans to weaken Eastern financially. This, in turn, has caused a marked increase in the rate of delays and cancellations of flights due to pilot write-ups. The chart attached as Exhibit B shows the sharp increase in the monthly delay and cancellation rate per 100 revenue departures from the start of "Max Safety" in late February 1987 through March 1988.

151. To further maximize the delay and disruption from numerous write-ups, ALPA's "max safety" coordinators published a list of those aircraft parts which are allegedly "very low in inventory." A true and correct copy of this list is attached as Exhibit C. ALPA has encouraged pilots to report those items for which replacement parts are unavailable, thereby forcing the plane to be temporarily taken out of service. As shown by the chart titled "Max Safety Targeted Parts," attached as Exhibit D, the usage of items listed on Exhibit C has increased significantly since the slowdown began.

152. At airports where Eastern has maintenance facilities, it has its own maintenance staff and spare parts. At airports where Eastern does not operate a maintenance base, it must contract with other airlines or aircraft maintenance contractors to service its planes. Spare parts may not be available at non-maintenance airports and must be flown in. Forcing noncritical items to be checked at non-maintenance airports, instead of permitting them to be checked at maintenance airports, greatly increases the chances that flights will be delayed or cancelled. The number of minimum equipment items opened or written up at non-maintenance airports dramatically increased after the slowdown began. Consequently, as shown in the chart attached as Exhibit E, the frequency of flight delays caused by the write-up of parts targeted by ALPA has increased significantly since the start of "Max Safety." On average, delays due to write-ups of targeted parts increased by over 31% during March-September 1987 compared to the same period in 1986.

153. ALPA has also sought to coordinate its slowdown program by urging all of Eastern's pilots to concentrate on a particular delaying tactic on ALPA's cue. Near the outset of the Max Safety slowdown, ALPA distributed to the pilots a series of four checklists listing a total of 72 purported "safety tips." Subsequently, ALPA distributed checklists 5 and 6 containing additional safety tips 73-79. In a follow-up "Max Safety Says" leaflet (attached as Exhibit F), ALPA directed the pilots to "feature" or "write-up," on a weekly basis, a specific safety tip from one of the distributed safety checklists on Max Safety's cue. Exhibit F is explicit that one of the purposes of the "Max Safety" campaign is to "send a message to management." The leaflet proudly notes that the program is having "a gigantic impact system-wide." ALPA explained this tactic-of-the-week strategy as follows:

> In order to demonstrate to management that the Max Safety campaign is working and has the hearty endorsement of all pilots, I would like to start sending a series of clear, unmistakable signals to the powers that be. The simplest and most effective way of doing that is by selecting one of the 72 tips I sent to everybody on the four safety check-lists and emphasizing it for a period of time. At just about the time we demonstrate that we're all working together on that one item, I'll switch signals, select another item from the checklists, and send you all a postcard with the effective dates for featuring that item.

154. The first tactic-of-the-week signaled by ALPA was "safety" tip #23 on checklist 2. Item 23 signaled pilots to use extra time when leaving the gate and taxiing to and from the gate in order to build delay into Eastern's flight schedules. This "slow taxi" tactic has led to increased taxi delays since the slowdown began with consequent disruption of flight schedules. ALPA next directed pilots to give "top priority" to "safety tip" #29. Item 29 signaled pilots to fly at lower altitudes in order to burn more fuel, thereby increasing Eastern's fuel costs. During the next week, ALPA directed pilots to take concerted group action with respect to "safety tip" #61, signaling pilots to use only full instrument approaches, even though visual approaches are FAA-approved under appropriate weather conditions and may be less time consuming. The following week, pilots were informed to feature "safety tip" #28, which signaled pilots to delay take-offs. Again, in another week, ALPA directed pilots to focus on "safety tip" #77 on safety checklist 6, thereby signaling pilots to write-up the presence of any insects on the plane—recognizing that such reports would force aircraft to be grounded until fumigated. A true and correct copy of ALPA's postcards and leaflets spelling out these tactics is attached as Exhibit G.

155. In addition to the postcards and leaflets, ALPA printed a series of "Safety Bulletins" which also contain selected items from the six safety checklists. These bulletins, posted in various locations throughout the airport, further encourage pilots to focus on selected safety items. For example, Item 5 of safety bulletin no. 13 implicitly signals pilots to focus on altimeters in their "write-ups." See Exhibit H. The

pilots are in fact responding to ALPA's signals. As illustrated by the chart attached as Exhibit D, the usage rate for certain altimeters, those in shortest supply, increased by over 40% during the first six months of "Max Safety" (March-August 1987) as compared to the same period in 1986. Item 4 on that same safety bulletin signals pilots that by increasing the number of "write-ups," the pilots could cause fines to be levied by the FAA against Eastern.

156. Similarly, item 4 on safety bulletin no. 17 instructs pilots to "write-up" windshield defects in a manner so that replacement of the entire windshield rather than minor repair is necessitated. A true and correct copy of safety bulletin no. 17 is attached as Exhibit I. Once again, as illustrated by the chart attached as Exhibit D, the usage rate of windshields from March through August 1987 increased by 67% over the usage rate during the same months of 1986.

157. Refusal of Aircraft. Before each flight, the captain of that flight is responsible for conducting a pre-flight inspection of the aircraft assigned to that flight. If the captain determines the aircraft has inoperative equipment involving functions critical to the safe operation of the aircraft, the captain can refuse that aircraft. The refused aircraft must be repaired immediately or the questioned items replaced before the flight can take place. Again, if the refused aircraft cannot be immediately repaired and if no replacement aircraft is available, the flight must be cancelled.

158. In furtherance of ALPA's max safety slowdown campaign, when ALPA pilots have been unable to ground a plane by way of a maintenance write-up or by discovering inoperative equipment involving functions allegedly critical to the safe operation of the aircraft, they have on repeated occasions simply refused to fly aircraft that could legally depart under the standards established by the FAA, the manufacturer, and Eastern.

159. For example, Captain R.W. Borland was disciplined for delaying flight 816 on July 14, 1987 and flight 514 on July 15, 1987 by requiring unnecessary and time-consuming action on the part of Atlanta maintenance personnel. The delay was caused by Captain Borland's unacceptable and unreasonable refusal to fly an aircraft that was legal for departure by the manufacturer, the FAA, and Eastern. Captain Borland had been previously reprimanded for delaying or refusing to fly six other aircraft that were legal for dispatch during the month of June 1987. Captain Borland was terminated in March 1988 after another series of incidents which called into serious doubt his proficiency as a pilot.

160. Similarly, on May 3, 1987, Captain A.F. Mihalow was replaced as captain of flight 328 as a result of his refusal to fly a scheduled flight that was legal for dispatch by the manufacturer, FAA, and Eastern. Again, no extenuating circumstances justified Captain Mihalow's refusal to fly.

161. All told, ALPA pilots at Eastern have refused to fly on approximately 56 separate occasions since the max safety campaign was announced, under circumstances which demonstrated that the refusals were unjustified.

162. Mail Campaign. As part of its max safety program ALPA distributed to all Eastern pilots a batch of five different pre-printed colored postcards and urged the to return the postcards to the heads of the Department of Transportation; the Federa Aviation Administration; the National Transportation Safety Board; the House Aviatio Subcommittee; and the Senate Aviation Subcommittee, noting any alleged problems the had experienced. Again, the clear coercive message from ALPA is that it will not ceas the postcard campaign to the agencies and Congress, and the slowdown effort in genera until Texas Air accedes to ALPA's demands and hands control of Eastern over to unions.

163. Regrettably, the postcard campaign detracts from the safety of the industry by leading federal investigators on wild goose chases. The key to the campaign is to flood the government with complaints, and many of ALPA's members have contributed to that effort even though the complaints are without factual basis. Significantly, one of the postcards signed by an Eastern captain explicitly states, "This is an illegal slowdown job action, I refuse to participate." Upon information and belief, many of the postcard complaints were intentionally false and were made for the purpose of defrauding the government in an effort to injure Eastern's business. Indeed, defendant Cole has admitted that "[t]he cards were not meant to be hard documentation," but were instead designed to prompt a congressional investigation of Eastern. Miami News, Oct. 22, 1987. Plaintiffs believe that IAM has also attempted to improperly influence government officials.

164. In order to promote more fully the postcard portion of the max safety campaign, ALPA has established several telephone numbers for pre-recorded messages advising pilots of current max safety matters. For example, a June 11, 1987 Code-A-Phone message encouraged pilots to participate in the slowdown in order to attain ALPA's objective of harming Eastern and Texas Air. The messages stated, "Invest the 14 cents [the price of postage for a postcard] in your future; don't sit this one out; safety is everybody's business."

165. Though ALPA has been most active in orchestrating the extortionate work slowdown at Eastern, IAM has also engaged in work slowdowns. Specifically, since April 1987, IAM mechanics have dramatically increased the number of manhours required to complete engine overhauls. This slowdown campaign has focused on the particular engines used in Eastern's wide-body aircraft because Eastern has fewer of those engines and a slowdown targeted against them will have the maximum disruptive effect. See chart attached as Exhibit J, which indicates that from March 1987 to March 1988 the number of

hours required to overhaul a widebody engine has increased by 60%, from approximately 3200 hours to about 5100 hours.

3. Defendants' Extortionate Sickout Campaign

166. ALPA has engaged in an extortionate sickout campaign in order to exert unlawful economic pressure on Eastern and Texas Air by creating staffing problems, leading to the cancellation or delay of flights. Once again, the intent of this activity is to inflict economic injury on Eastern, and to continue doing so until Texas Air delivers control of Eastern to the unions.

167. On January 26, 1987, Eastern announced an attendance policy for pilots at the same time it revised its company-wide attendance policies. Eastern took this action in order to cure abusive use of sick leave and to encourage pilots to report for work on time. Prior to announcement of the new policy, Eastern's sick leave rate was considerably higher than the industry average, and absenteeism had cost the company $70 million in 1986 alone. The policy implemented by Eastern was comparable to that in place at other major carriers, including United.

168. ALPA's campaign against Eastern's attendance policies has taken several forms, all designed to limit severely the number of pilots available to fly for Eastern so as to cause numerous flight cancellations, thus further closing the economic vise on Texas Air in the unions' effort to acquire Eastern. ALPA has encouraged pilots who are scheduled to fly to call in sick when they are not, and has encouraged pilots who are not scheduled to fly to make themselves unavailable to substitute for those who call in sick.

169. These coordinated efforts have caused a dramatic increase in the use of pilot sick leave in recent months. In the first few days of December between 179 and 184 pilots were using sick leave. By the end of December, 261 pilots were on sick

leave. By the end of February 1988 that figure was 296 pilots. Though the number of pilots on sick leave has declined somewhat since February, that number is still about 50% higher than the normal sick leave rate at Eastern, and twice as high as at other major carriers.

170. ALPA has ensured that Eastern faces further pilot staffing problems by encouraging pilots to make themselves unavailable to be "drafted," i.e., called for flights that they are not scheduled to fly. An ALPA code-a-phone message encouraged pilots to make themselves unavailable for draft by reminding them that "If they can't get 'ya, they can't draft 'ya." If the pilot scheduled for a flight is not available and other pilots make themselves unavailable for draft, Eastern is forced to cancel or delay flights.

171. Upon information and belief, ALPA has gone so far as to encourage Eastern's pilots to leave the company and work elsewhere, in an effort to further disrupt Eastern's ability to keep its service commitments.

172. ALPA's sickout campaign and related actions have created pilot staffing problems that have necessitated the cancellation of numerous Eastern flights. During February 1988, Eastern was forced to cancel 321 flight legs, representing more than 635 crew hours and 36,244 passengers who had been booked on those flights. Moreover, in March 1988, Eastern was forced to cancel 593 flight legs, representing more than 966 crew hours and 35,977 passengers booked.

4. Defendants' Deliberate Interference With Eastern's Employment Relations with ALPA and IAM Members.

173. One of the most insidious components of defendants scheme to destroy Eastern is the false and disparaging propaganda campaign that defendants have directed toward Eastern employees for the purpose of killing their commitment to the welfare of the company.

174. Eastern is a competitor in a service-oriented industry. As ALPA and IAM frequently proclaim, the service-oriented nature of the business places a premium on loyal and dedicated employees who are committed to furthering the welfare of the company's business and preserving its goodwill among the traveling public. For the very reasons that a committed workforce is essential to Eastern's success, a disenchanted and demoralized workforce is extremely destructive to the airline's ability to provide quality service, and to generate goodwill among consumers for the future.

175. Recognizing this, defendants have, during the past year, flooded ALPA and IAM members with newsletters, leaflets, bulletins, correspondence, and other material designed to deceive Eastern's employees into believing that the company they work for is bent on their destruction. Defendants' propaganda machine has generated a steady stream of false and defamatory accusations about both Texas Air and Eastern's management for the purpose of destroying the loyalty of the airline's employees, and undermining both their dedication to quality work and their confidence in the future viability of the airline. To further the goals of the union hierarchy, defendants have callously manipulated the emotions of ALPA and IAM members.

176. The volume of defendants' deceptive communications to the Eastern workforce is massive. It is not possible in this complaint to detail even a small fraction of the false, deceptive, and disparaging statements with which defendants have constantly bombarded Eastern employees. However, the following examples are illustrative:

(a) In a July 17, 1987 letter mailed to all ALPA members, ALPA's national president Henry Duffy wrote:

> I know that some members will be surprised at the magnitude of the problem at Eastern. Despite ongoing difficulties of individual carriers, there have been excellent reasons to believe that the worst aspects of deregulation are over now. . . . Unfortunately, seeing a light at the end of the

> tunnel doesn't guarantee that you can't still be run over from behind by a runaway freight train. The runaway train, in this case, is the [Texas Air Corporation], where arrogant management, demands for draconian employee concessions, and flagrant disregard for labor agreements and safety concerns are the daily order of business at Eastern.

(b) The January 1988 issue of the "Checklist," published and mailed by defendant Eastern MEC to Eastern pilots, contained the following description of Texas Air:

> 4500 Eastern pilots [have been] engaged in a vicious struggle with tyranny. The tyrant, one known at that time as Francesco Lorenzo, had earned a reputation across the land as a money changer, that he had become so enchanted with the accumulation of riches that he was to have put aside all behavior that resembled honor, compassion, truthfulness and obedience of the laws of the land. His demeanor toward those in his servitude became such, that he seemed to have been a student and admirer of several historical figures, Adolf Hitler, Joseph Stalin, and several others that served as commandants of prison camps in the area of the Orient, now known as North Korea, China and North Vietnam. He surrounded himself with several of like mind and with their assistance and obedience proceeded to destroy thousands upon thousands of careers, and if families of those whose careers were destroyed were to be considered, his destruction of humanity grew to the hundreds of thousands.

(c) In a February 29, 1988 "Family Awareness" bulletin mailed to Eastern pilots and their families, ALPA stated: "We would like to remind everyone now to continue writing your congressmen about the deteriorating situation here at Eastern Air Lines. It's having a positive effect. However, we must continue stressing our point and condemning the tactics by management to destroy our company."

(d) In a recent memorandum to IAM employees of Eastern, District 10. stated:

> As you are aware, Lorenzo's "new band of strategists" are engaging the employees on all sides. . . . The "new band of strategists" continue to spread

> unfounded and unwarranted rumors, with no validity, to confuse, divide and conquer approach [sic], in an attempt to break our spirit. . . .
>
> In this era of union-bashing, backed by anti-worker courts and an anti-union administration, we must continue to CYA, stand in a bond of solidarity in full support of District 100, to let the "CORPORATE WORKER-HATING STRATEGIST'S" of this company know that when they take on I.A.M., they're fighting the solidarity of more than 14,000 members, that has earned us the reputation of "FIGHTING MACHINISTS".

(e) On May 25, 1987, District 100 distributed another memorandum to members of the Atlanta IAM local. In this memorandum, District 100 wrote:

> Enclosed in this hand-out is material relevant to the Company's ongoing campaign to undermine your rights, intimidate you and your family, and breakdown your resolve to expect fair wages and benefits for your labors.
>
> The Texas Air Corporation is financing this attack, and is willing to spend any monies needed to successfully lower your standard of living. The $490 million in wage and benefit concessions they are seeking, is motivating them to stoop to the lowest level of conduct imaginable.
>
> . . . . Frank Lorenzo's management must carry out these repressive measures or their job is jeopardized. These same people, who many of you socialize, worship with, and participate in community charities with, will at the drop of a hat, terminate you to save their own job. . . . It's a shame that a character like Lorenzo can pit friends against friends, just to build his empire.

(f) In a tape recorded phone message dated April 19, 1988, the Eastern MEC offered the following judgments to Eastern's ALPA members:

> Everyone of our negotiators and most of their advisors will be living under any agreement reached with management. We don't think [Eastern's] management team can guarantee the same. Our negotiators may not be slick hired-gun, union-busting types, but they do have a lot of integrity.

(g) In another tape recorded phone message dated April 26, 1988, Eastern MEC made the following declarations to Eastern pilots:

> It's your jobs Lorenzo wants to farm out to anybody who will work for nothing. . . . This management, under the direction of [Vice-President] Tom Matthews, does have a healthy respect for your ability to resist the heavy-handed methods used by them so far. . . . This management is manipulating without conscience for its own personal greed.

(h) On March 10, 1988, District 100 distributed a memorandum to all its members, signed by the individual defendants who are the officers and general chairmen of District 100. In the memorandum, they represented: "We urge all employees to make every effort to not give the Lorenzo 'Invasion Team' who now occupy your airline any excuse to remove you from your job. They will resort to any tactics with no regard for ethics, principal or fairness. The more they brutalize our employees, the weaker they become."

(i) On December 17, 1987, District 100 distributed a bulletin to IAM members which alleged: "The other majors combined can make a profit while paying wages that put their employees very close to the same levels of pay. Lorenzo's mismanagement of your airline and his obsession to build an enormous personal fortune are the reasons you are being asked to reduce the standard of living for you and your family to a level below the official poverty line." This bulletin too was signed by each of the officers and general chairmen of District 100.

(j) On October 22, 1987, the management of District 100 signed another bulletin distributed to IAM members, which stated: "Eastern has a long history of management policies which undermine the company's revenue generating capability just around contract bargaining time." The bulletin went on to assert that Eastern's management had been "manufactur[ing] additional losses for Eastern. . . ."

(k) In a March 1988 edition of "Labor Speaks," a publication of TWU's Local 553 (a member of the Coalition with ALPA and IAM), the following assertions were made:

> Disinformation is a subversive tactic most frequently used by totalitarian regimes to undermine the credibility of their opponents by deliberating leaking false information. We can expect this tactic to be used by Eastern management as a means of causing division between the work groups, and within the groups themselves. Many of the rumors that circulate amongst the employees may very well have been started as part of a calculated disinformation campaign by the company.

The same publication went on to claim:

> If Eastern's owners succeed in crushing the Unions of skilled employees, whose safety and schedule-keeping records are second to none, the effect would spread throughout the airline industry, reducing not only wages and working conditions but passenger safety, comfort and convenience as well.

(l) In a "Family Awareness" publication mailed by the Eastern MEC to Eastern pilots and their families in April 1988, ALPA made the following assertions:

> We must halt the wanton dismantling of our Company by people who have no desire to run a profitable airline. It will be profitable, in their minds only, if it is run at the expense of all labor groups.

(m) On March 25, 1988, Eastern MEC member Robert Breslin asserted in a memorandum distributed to all Council 18 Eastern pilots:

> "The Hostage Fund is depleted. The war escalates. The victims and their families suffer. YOU COULD BE NEXT. We now have four pilots terminated for ALPA related activities. Several more have been grounded without pay for up to a month. All of these cases have been grieved but the process is lengthy. In the meantime, they and their families are suffering because they were working to protect your job."

(n) An April 1, 1988 edition of the "Checklist," mailed by Eastern MEC to Eastern pilots, contained the following allegations:

> "No one in Lorenzo's entourage has ever shown a real ability to manage people or other assets in his revered marketplace, that is with any reputable and profitable company. . . . Lorenzo and gang cannot produce one red cent of revenue in this business. They may steal or transfer assets, or create paper empires, but cannot bring in any money from the public in the manner in which [Eastern] is licensed to operate."

177. In addition to distributing anti-Eastern propaganda to ALPA and IAM members who are employed by the airlines, defendants have also directly encouraged Eastern's workforce to reduce their level of dedication to the welfare of the company. Defendants' practices in this regard closely parallel the so-called "Work-to-Rule" strategy recommended by the Industrial Union Department of AFL-CIO in a manual entitled "Winning with Workplace Strategies." In a recent issue of the "Checklist," defendant Eastern MEC excerpted portions from the manual containing the following discussion of that strategy:

> Most workers, especially dedicated union members, go far beyond what they are required to do in their jobs, giving an extra effort that makes a big contribution to the employer. . . . When these same workers conduct a tight work-to-rule campaign, the psychological as well as economic results can be stunning.
>
> The central idea of a "work-to-rule" campaign is the same in any place of employment, any type of employer—do only what you are hired to do, what you are absolutely required to do, nothing more, nothing less.

In implementing this strategy, Eastern MEC recommended a number of specific tactics, including refusing to work overtime, "working to the clock," devoting "no extra effort," and doing no work that is not precisely called for by the employee's job description.

178. Further, defendants have gone so far as to enlist the aid of Eastern's employees in damaging Eastern's sister company, Continental. Upon information and belief, District 100 has induced Eastern ground crews to disrupt Continental flight schedules and damage Continental's good will by delaying needed services on Continental aircraft.

179. One tactic used by ALPA during its fight with Continental in the 1983-85 time period was to flood Continental's toll-free reservations lines with phony flight bookings. This effort to defraud Continental had the dual effect of increasing Continental's communications costs and preventing real passengers from obtaining seats on Continental flights, costing Continental substantial fare revenues. In addition, since the reservations made by ALPA members were not genuine, the campaign disrupted Continental's service by creating a high percentage of "no shows" at departure time.

180. It appears that to bring maximum economic pressure against its parent, Texas Air, ALPA and IAM members have renewed-their efforts to interfere with the Continental reservations system.

181. Leaflets have been distributed to Eastern employees encouraging them to flood Continental reservations lines with phony calls. Examples are attached as Exhibits K and L. The leaflet attached as Exhibit K states:

> "It is common knowledge that many of you have been calling Continental's Toll Free Telephone Number (1-800/638-REAR) in a concerted effort to add congestion to an already substandard reservation system. Knowledge of the fact that each call has cost Frank [Lorenzo] fifty cents has not been sufficient satisfaction for many of you who have gone so far as to make false reservations or walk away from pay phones leaving the phone off the hook."

Affixed to the leaflets are duplicates of stickers distributed by ALPA, including one that proclaims: "HAD ENOUGH YET? SHOVE IT UP THEIR REAR." This sticker clearly directs the recipients to flood the Continental reservations line with phony calls.

182. The leaflet attached as Exhibit L encourages Eastern employees to ca the Continental reservation line and then hang up when the calls were answered, thus "adding to the congestion of their reservation system and costing Mr. Lorenzo more than fifty cents per call." (Emphasis in original.)

183. These tactics conform to a time-honored strategy called "phone flooding," *which is described in the document prepared by the Industrial Union* Department of the AFL-CIO, entitled "The Inside Game: Winning With Workplace Strategies." That document recommends the use of "phone flooding":

> One of the most vulnerable pressure points of any employer is its ability to communicate, and the chief means of communication for any enterprise these days is the telephone. Armed with the right phone numbers and an appropriate message, a small handful of individuals can effectively tie up large numbers of lines and dramatize the message by calling again and again. In order to protect against retaliation, it is wise to recruit volunteers from the community to do the actual calling.

Eastern believes that copies of "The Inside Game" were distributed or made available by ALPA or Eastern MEC to its members at Eastern.

5. Defendants' Deliberate Interference with Plaintiffs' Efforts to Obtain Financing

184. On February 18, 1988, defendants ALPA and IAM in conjunction with TWU and the Industrial Union Department of the AFL-CIO, announced a national campaign designed to exert wrongful economic and other forms of pressure on Eastern and Texas Air in pursuit of their goal of acquiring Eastern or Texas Air.

185. The campaign is called APEAL: Abused Passengers and Employees Against Lorenzo. It focuses on Eastern's hub cities and involves public demonstrations, a public "inquiry" by a panel composed of participants selected by defendants. During the demonstrations, "Stop Lorenzo" T-shirts, stickers, placards, buttons and literature were distributed to the public.

186. Defendant District 100 described the campaign's goal as "to stop worker abuse and passenger abuse and to force Lorenzo either to settle with the unions on an equitable basis or to sell Eastern to another owner or to the employees".

187. More specifically, APEAL is designed to further tie Eastern's hands economically by exerting public pressure on those financial and lending institutions that are associated with the airline; "to focus maximum pressure on financial institutions who by dealing with Lorenzo must share the blame for Lorenzo-abuse of passengers and brutalization of employees."

188. More recently, the APEAL campaign has tried to cut off Eastern's financing by wrongfully exerting public pressure and intimidation against Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch"), which Eastern has asked for assistance in obtaining sorely needed financing.

189. On or about March 10, 1988, the unions commenced a vicious public relations campaign against Eastern, Texas Air, and Merrill Lynch. This campaign included a rally held on March 10, 1988 in Philadelphia, Pennsylvania, in which union officials and members picketed one block from Merrill Lynch's offices and attacked Merrill Lynch for providing financing to Eastern. Joseph B. Uehlein, an AFL-CIO official who is coordinating the campaign against Eastern and Merrill Lynch, has stated that similar demonstrations will be held in Houston, Denver, and Los Angeles.

190. The avowed purpose of these demonstrations is to cut off Eastern's financial backing: "We're taking on Merrill Lynch," a union official said. "We hope to convince them to stop dealing with Lorenzo." Washington Post, March 20, 1988, at H8.

191. The unions recently sent a letter to Merrill Lynch Chairman William Schreyer outlining the coming "show-down" with Eastern, Texas Air, and Merrill Lynch, and advising Merrill Lynch that it could avoid this showdown only if it ceased to provide financing to the Texas Air companies.

192. To force Merrill Lynch to stop financing Eastern, the unions have intimated that they will withdraw the "hundreds of millions of dollars in employee pension funds" managed by Merrill Lynch if it does not agree to their demand.

193. Defendants' efforts to strip Eastern of outside sources of financing is an integral part of their larger campaign of economic blackmail and extortion. By interfering with Eastern's business through illegal smear campaigns, work slowdowns, and sickouts, defendants have seriously injured Eastern's economic viability. By unlawfully interfering with Eastern's outside sources of financing, they have attempted to deny Eastern the means of resisting this economic extortion. In short, if Eastern cannot obtain financial help for its losses, it is more likely that Eastern and Texas Air will be forced to accede to defendants' demand for ownership and control of the airline.

* * *

194. If the defendants in this case were competitors of Eastern, or other business organizations, no one would doubt the illegality of their practices. Efforts by one business to destroy another in the hopes of acquiring its assets at bargain basement prices are clearly actionable under a host of civil and criminal laws. Similarly, no one would object to the prosecution of an individual who threatened to burn down his neighbor's house unless the neighbor sold it to him at less than market value. Defendants in this case, however, have avoided at least public condemnation because they have pretended to justify their illegal activities by invoking the standard of employee rights. These practices have nothing to do with legitimate labor activities and are unprotected by the federal labor laws. Defendant Bryan admitted as much during his March 1988 interview on radio station WIOD in Miami. During the program, Bryan candidly stated: "[T]he public out there thinks, oh, this is a labor-management dispute. This is a

Respectfully submitted,

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Attachment IV
Page 1 of 5

FILED BY CSL D.C.
MAR 3 1989
ROBERT M. MARCH
CLERK U.S. DIST. CT.
S.D. OF FLA.-MIAMI

EASTERN AIR LINES, INC.,

Plaintiff/Counterdefendant,

vs.

INTERNATIONAL ASSOCIATION OF
MACHINISTS, et al.,

Defendants/Counterplaintiffs.
------------------------------------/

No. 89-0249-Civ-Atkins
No. 89-0292-Civ-Atkins

Order on Emergency Motion.

This cause is before the court on Eastern Air Lines' ("EAL") emergency motion to clarify this court's preliminary injunction and for an adjudication of contempt. Responsive memoranda filed by the International Association of Machinists ("IAM") have been received and reviewed. A hearing was conducted in camera at 8:00 a.m., Friday, March 3, 1989. Now, upon consideration of the motions, the memoranda, and the relevant case law and statutory provisions, it is

ORDERED AND ADJUDGED as provided below.

A.

On February 17, 1989, the court issued a preliminary injunction designed to maintain the status quo required by the Railway Labor Act §5, First, 45 U.S.C. § 155, First. The status quo must be maintained throughout the thirty-day "cooling off" period required by that section. The thirty-day period is due to expire at midnight tonight.

Yesterday, the court denied joint motions for contempt denied EAL's motion seeking modification of the injunction. EAL now alleges that additional action undertaken by IAM wa a contempt citation. It also seeks an order stating that the injunction will not be violated if, due to the circumstances described below, IAM members are relieved from work today. EAL has stipulated, *inter alia*, that employees thus relieved will receive full compensation and that their work will not be sent to subcontractors.

B.

EAL alleges that IAM members, on the evening of March 1, 1989, deliberately set four fires in several locations in Miami International Airport and in Atlanta's Hartsfield International Airport. Credible evidence supports the conclusion that one of the fires, set directly beneath the concourse area from which passengers embark and disembark, posed a grave threat to the public. EAL also alleges that IAM members have staged demonstrations at various airports for the stated purpose of interfering with passenger ingress and egress.

Although no one witnessed the lighting of the fires, the context in which these incidents occurred strongly suggests that the fires were started by IAM members. Regarding the public demonstrations, the court takes judicial notice of the fact that IAM members were indeed among those demonstrating.

C.

In seeking to relieve the employees from work today, EAL seeks self-help prior to the expiration of the statutory "cool off" period. Such requests are presumptively impermissible. *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co*

394 U.S. 369, 378 (1969)("While the dispute is working its way through these [statutorily-prescribed] stages, neither party may unilaterally alter the status quo"). The mere fact that employees illegally resort to self-help during the cool-down period does not, standing alone, permit the carrier to do the same. *See National Airlines, Inc. v. International Association of Machinists and Aerospace Workers*, 416 F.2d 998, 1004 (5th Cir. 1969).

Nevertheless, carrier self-help is permitted prior to the expiration of the cooling-off period if the court determines that the help is "reasonably necessary . . . to make a meaningful reality of [the carrier's] right to continue to operate." *Florida East Coast Railway Co. v. Brotherhood of Railroad Trainmen*, 336 F.2d 172, 182 (5th Cir. 1964). Even if such a determination is made, the proposed self-help is "justified only to the extent necessary to restore service." *National Airlines*, 416 F.2d at 1006; *see also Brotherhood of Railway and Steamship Clerks, et al. v. Florida East Coast Railway Co.*, 384 U.S. 238, 247 (1966)("[T]he justification for permitting the carrier to depart from the terms of the collective bargaining agreement lies in its duty to continue to serve the public"); *United Industrial Workers of the Seafarers Int'l Union v. Bd. of Trustees of Galveston Wharves*, 400 F.2d 320, 329-30 (5th Cir. 1968)(key distinction between Railway Labor Act and National Labor Relations Act is that former is concerned primarily with "continuance of the employer's operations").

Applying these principles to the facts of the present case, this court concludes that the proposed self-help should be permitted. First, the proposed action is reasonably necessary to make a "meaningful reality" of EAL's right to continue to operate. EAL simply will not be able to provide safe, efficient service against the backdrop of arson and vandalism. The proposal is, therefore, reasonably necessary. Further, the ends sought by the proposal -- passenger safety and effective service -- are manifestly legitimate. The court is convinced that EAL is not motivated by an anti-union animus.

Turning to the second consideration, the court concludes that the proposed action is not overbroad. These employees are not being discharged and they will receive full compensation. Their work will not be sent to outside contractors. No replacements will be hired today and any person who performs their work today will not attain the status of a permanent replacement for purposes of rehiring. See N.L.R.B. v. Mackay Radio & Tel. Co., 304 U.S. 333 (1938)(employer need not discharge those hired to replace strikers). Finally, nothing in this order shall be construed to prohibit the lawful exercise of constitutional rights. The proposed action will, therefore, do no more than what is absolutely necessary to restore service.

The court has carefully considered whether the ends sought by the proposal could be accomplished through less restrictive means. At the hearing, counsel for IAM suggested that EAL post extra security guards in the areas stricken by vandalism.

Counsel further argued that it is unfair to relieve all IAM members for the actions undertaken by only a few. The court is sympathetic to these arguments, but it believes there is no other way to achieve EAL's legitimate ends and avert these life-threatening situations. Consequently, EAL's motion is GRANTED and IAM members may be relieved from work today in accordance with the provisions of this order.

D.

Ruling on EAL's renewed motion for contempt is hereby DEFERRED. Notice of the court's ruling will be disseminated according to the scheme outlined at the hearing.

DONE AND ORDERED at Miami, Florida this 3rd day of March, 1989.

Clyde Atkins
UNITED STATES DISTRICT JUDGE

cc: all counsel of record

Attachment V
Page 1 of 18

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

EASTERN AIR LINES, INC.,
Plaintiff,
v.
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, ET AL.,
Defendants.

No. 89-0249-Civ-ATKINS

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, ET AL.,
Plaintiffs,
v.
EASTERN AIR LINES, INC.,
Defendant.

No. 89-0292-Civ-ATKINS

ADDENDUM TO THE DECLARATION OF D. ROGER FERGUSON

I, D. Roger Ferguson, hereby declare under penalty of perjury as follows:

1. On February 17, 1989, this Court enjoined the International Association of Machinists and Aerospace Workers, AFL-CIO ("IAM") from engaging in work-slowdown type activity. Since this Court issued its injunction, the IAM has continued a systematic slowdown which has directly affected the productivity of Eastern's maintenance operation.

Attachment 1

2. Since February 17, 1989, the "C" and "D" check[1] maintenance backlog described in my February 17, 1989 Declaration has become even more severe. On that date, Eastern had a backlog of 17 planes awaiting "C" or "D" checks,[2] while eight planes were undergoing maintenance or overhaul. Since the Court's injunction, 43,207 man-hours have been invested in "C" checks resulting in the completion of only three planes. At standard productivity these three checks would have required only 8,650 hours. Moreover, 9 additional planes have been grounded due to the need for maintenance checks. Thus, the total number of backlogged planes has increased by 6, from 17 to 23. See Exhibit A, attached.

3. The increase in backlog is directly related to the decreased level of maintenance production at Eastern. For example, in January of 1988, maintenance workers were able to complete 3 units of "C" check production at or near the "standard"[3] number of hours budgeted for 3 "C" check units. See Exhibit B, attached. As further demonstrated by Exhibit B,

---

[1] "C" checks are limited maintenance checks, performed once per year, and "D" checks are complete aircraft overhauls, performed once every 5 to 7 years. Pursuant to federal regulation, when a plane is due for either a "C" or "D" check, it is grounded until the check is completed.

[2] 12 of these planes were due for "C" checks and 5 were due for "D" checks.

[3] As described in my earlier declaration, Eastern measures maintenance productivity by establishing "standards" for each maintenance check function. A "standard" is the number of man-hours reasonably expected to be required for the performance of specific maintenance tasks. See Declaration of D. Ro Ferguson, February 16, 1989 at ¶ 4.

actual "C" check hours were relatively close to standard "C" check hours for most of 1988.

4. In early 1989, however, productivity dropped drastically, and actual "C" check man-hours began to greatly exceed standard man-hours for "C" check production. Id. Thus, actual hours have exceeded the standard by almost 200% for January and the first two weeks of February 1989.[4] See Exhibit C.

5. Productivity has continued to drop sharply despite this Court's February 17, 1989 injunction. Subsequent to the injunction, actual "C" check man-hours have exceeded "standard" by 400%, see Exhibit C, and, in some particular instances, by even more. For example, on the day Eastern was last before this Court, eight planes were undergoing "C" or "D" checks. One of these was aircraft #881, a Boeing 727. The standard number of man-hours budgeted to complete the "C" check on this plane was 2,196 man-hours, which was approximately the same as the actual and standard for its last three "C" checks. See Exhibit D. Prior to February 17, 1989, 11,491 hours of work had been performed on this plane. Subsequent to the injunction an

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[4] Beginning January 1, 1989, Eastern increased its maintenance standards for "C" and "D" checks by an average of 15%. This means that Eastern now allows for 15% more man-hours to perform these checks than previously. For example, in 1987, Eastern allotted an average of 2,133 man-hours to complete a "C" check in Atlanta. In 1988, the average standard was increased to 2,160 man-hours. For 1989, the standard is 2,505 man-hours. In Miami, the average standard for "C" and "D" checks was similarly incerased from 1987-1989.

additional 4,056 hours was performed, bringing the total to 15,547 man-hours, or more than six times the standard. Id. Nevertheless, the "C" check on this plane has yet to be completed. Another plane currently undergoing a "C" check is aircraft #422, a Douglas DC-9. Prior to February 17, 7,379 hours of work had been performed on this plane. Since this Court's order, an additional 6,346 hours has been performed for a total of 13,725 man-hours, or five times the standard of 2,759 man-hours for this plane. The "C" check on #422, however, has yet to be completed.

6. At current productivity rates, the backlog of aircraft will continue to grow dramatically. Every week, four to six aircraft are taken out of service for "C" or "D" checks. To avoid an increase in the backlog, an equal number of planes must be returned to service each week. At standard productivity levels, approximately 35,000 man-hours[5] are required to return these aircraft to service. At recent slowdown levels of productivity, however, it would take approximately 97,000 man-hours[6] to return four to six aircraft to service. Eastern's current man-hour capacity for "C" and "D" checks is 45,000 man-hours per week, without overtime. If all Eastern Aircraft

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[5] Assuming, on an average week, 4 narrow-body "C" checks @ 2,505 hours, or 10,020 hours total; 1 wide-body "C" check @ 6,300 hours; and 3, one-quarter "D" checks @ 25,000 man-hours per full "D" check, or 18,900 hours total.

[6] In the two weeks prior to this Court's injunction actual man-hours exceeded the standard by 177%. See Exhibit C

Service Center workers were required to work seven days per week, capacity could be increased to 63,000 man-hours per week. Therefore, at slowdown productivity rates, the number of man-hours needed to keep the backlog from increasing (97,000 man-hours), will greatly exceed even overtime capacity (63,000 man-hours).[7]

7. Moreover, even at standard productivity levels, Eastern would require approximately 222,600 man-hours to clear the existing backlog of 23 aircraft.[8] Thus, assuming that productivity returned to standard rates for work performed on both incoming planes and those in backlog, then only about 12% of the backlog could be cleared each week. It would therefore take mechanics working seven days a week at standard productivity approximately eight weeks to clear the backlog.[9]

---

[7] Hiring new employees would not increase Eastern's "C" and "D" check capacity. In the past two months, Eastern has brought on approximately 280 new mechanics, and all eight "C" and "D" check lines are presently at full capacity. In fact, Eastern added a new check line in January 1989, and there is no room on existing lines for more mechanics (as only so many mechanics can work on a plane at the same time). Further, it would take Eastern at least 6-8 weeks to put in place the superstructure necessary to open a new check line. When current Eastern employees return to normal productivity levels, the extra employees and additional maintenance line would obviously be unnecessary.

[8] 16 narrow-body "C" checks @ 2505 hours, 2 wide-body "C" checks at 6,300 hours, and 7 "D" checks @ 25,000 hours.

[9] This is only theoretically possible, because pursuant to federal regulation, mechanics must be given one day off in every seven days of work, or the equivalent thereof over a 30 day period. Thus, in practice, the time period to decrease the backlog would be much greater, as mechanics can work seven days per week for only two weeks.

8. As these statistics show, simply increasing the raw numbers of man-hours worked, through overtime, continues to have no impact on the backlog problem because of Eastern's abnormally low productivity. For example, in the three days ending February 26, 1989, Eastern invested a combined total of 10,352 overtime hours in the Atlanta and Miami maintenance check facilities. This is in addition to the approximately 25,000 man-hours of regular time for that period. Despite over 35,000 man-hours of work, only one "C" check was completed in this time frame. Likewise, on February 21 and 22, employees in the Miami Accessory Service Center worked 300 and 450 hours of overtime, respectively. See Exhibit E, attached. Production in the same time period, however, actually decreased. See Exhibit F, attached. Indeed, the only apparent impact of this ineffective overtime is that the increased cost is a serious drain on Eastern's unstable financial condition.

9. In addition to the futility of overtime, Eastern has continued to experience difficulty in getting IAM-represented employees to accept overtime voluntarily. For example, in the three day period ending February 26, 1989, Eastern made 715 individual requests for voluntary overtime at the Atlanta "C" check facility. Only 48 of those requests were accepted, for a refusal rate of 93%. In the same time frame, 2017 voluntary overtime requests were made at the Miami maintenance check facility. Only 69 were accepted, for a refusal rate of 97%. When employees refuse to accept overtime voluntarily, Eastern is

forced to undertake a time consuming forced overtime procedure, resulting in further delays.

10. The slowdown at Eastern is not limited to workers performing "C" and "D" checks. The Engine Service Center ("ESC") has also been affected. The ESC is responsible for repair and overhaul of all engines on Eastern planes, with the exception of the RB211-535E4. Eastern owns 85 spare engines, utilized to replace engines undergoing repair. Eastern's historical practice has been to have 58 of these engines under repair (indicated as "Normal Work in Progress" on Exhibit G, attached), leaving 27 in serviceable condition, ready to be placed in aircraft as necessary.

11. For a number of reasons (some of which were unrelated to productivity), Eastern begain 1989 with 83 of its 85 spare engines needing repair. See Exhibit G. In order to reduce the number of engines needing repair to the historical level (58), Eastern retained 100 mechanics above the level needed to keep pace with removals, and adopted a 1989 plan to reduce the backlog to normal levels by the end of the 2nd Quarter of 1989.

12. As shown by Exhibit G, as recently as February 1, 1989, the backlog of engines awaiting repair was within 1 unit of the 1989 plan. Since the beginning of February, a slowdown in the production rate has resulted in an increase in the engine backlog to nearly 15 engines greater than planned. Thus as of February 23, 1989, the 85 spare engines, as well as five additional engines, were awaiting repair.

13. At the time this Court issued its injunction on February 17, 1989, Eastern had no planes grounded for engine maintenance alone. Since that time, several CF6-50 engines have been removed for maintenance, but replacements were not available due to decreased production levels. As a result, two A-300 aircraft have been grounded for lack of operational engines.

14. The Accessories Service Center has also been affected by the slowdown. The Accessories Service center is composed of a number of shops which perform maintenance on rotable "SPARC" parts that are needed on a day-to-day basis to keep aircraft operational. Rotable parts are selected parts, such as wheels and instruments, which are repairable and expected to last for the life of the airplane. When the supply of "SPARC" parts becomes too low, aircraft may be grounded because replacement parts are not available. Since the Court's order enjoining slowdown activity, the backlog of "SPARC" parts needing repair has steadily increased. See Exhibit H, attached. The result is a dramatic decrease in the number of serviceable parts ("SPARC" parts available for installation as needed), as demonstrated by Exhibit I, attached.

15. The cumulative impact of the IAM slowdown has been to disrupt Eastern's operations and to inconvenience the travelling public. For example, near-term, maintenance-related cancellations caused by the slowdown increased from 21 per day in January, 1989, to approximately 39 per day in February, 1989. Since the preliminary injunction was issued on February 17th, a-

average of 63 flights per day have been cancelled due to lack of operational aircraft.

I hereby declare under penalty of perjury that the foregoing is true and correct. Executed this 7th of February, 1989.

D. Roger Ferguson

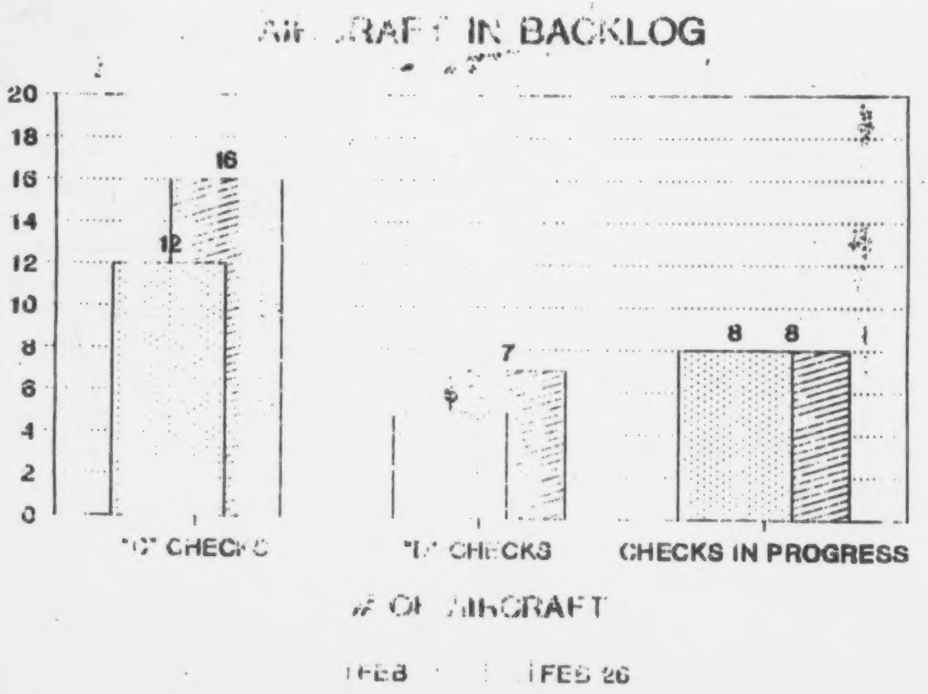
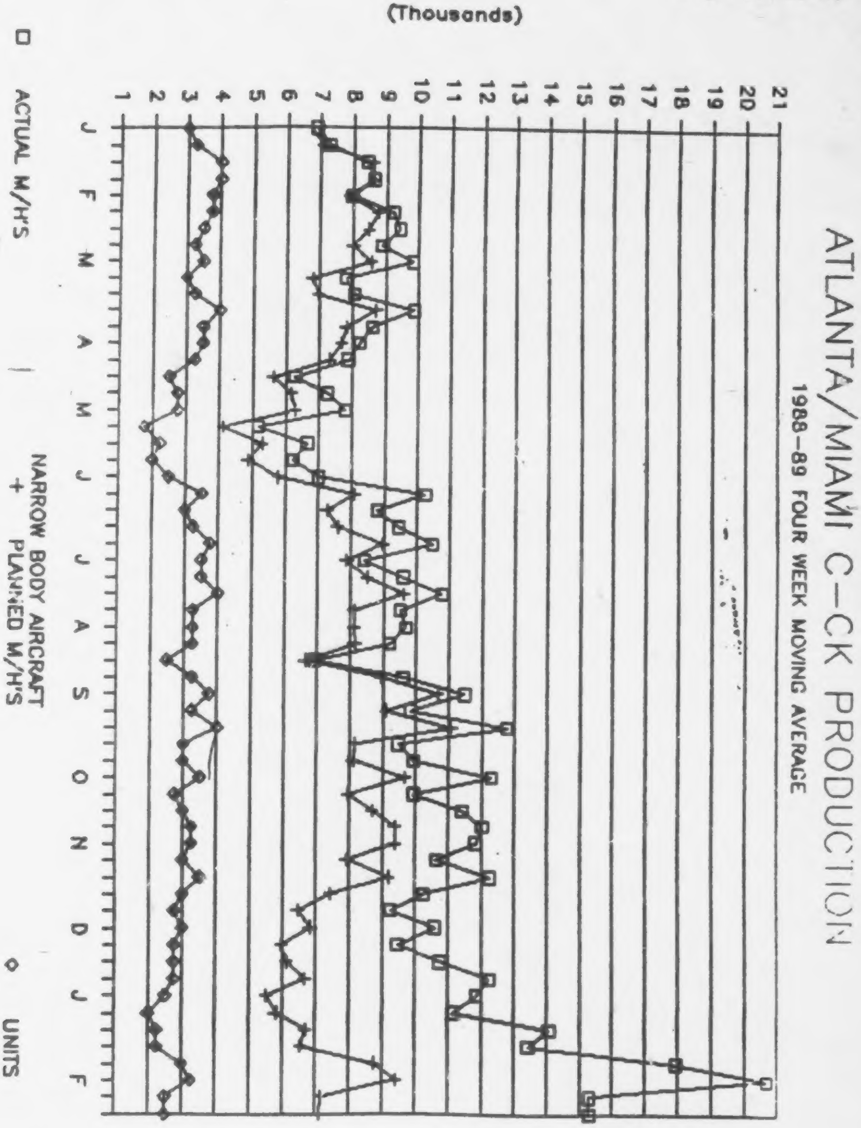


Exhibit A

Exhibit A

Attachment V
Page 11 of 13



ATLANTA/MIAMI C-CK PRODUCTION

1988-89 FOUR WEEK MOVING AVERAGE

Exhibit B

Exhibit B

Attachment V
Page 12 of 18

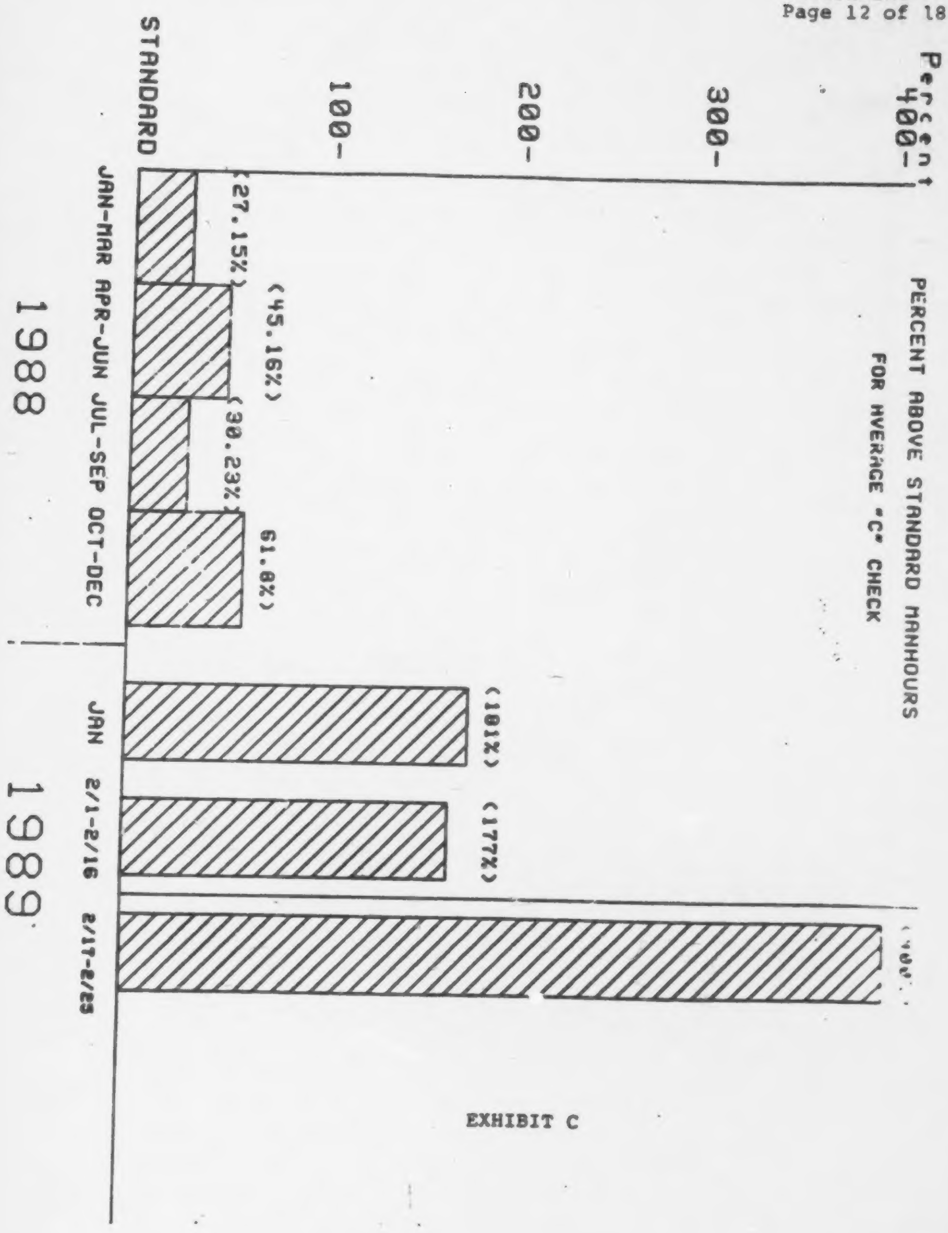

PERCENT ABOVE STANDARD MANHOURS FOR AVERAGE "C" CHECK

EXHIBIT C

Attachment V
Page 13 of 13

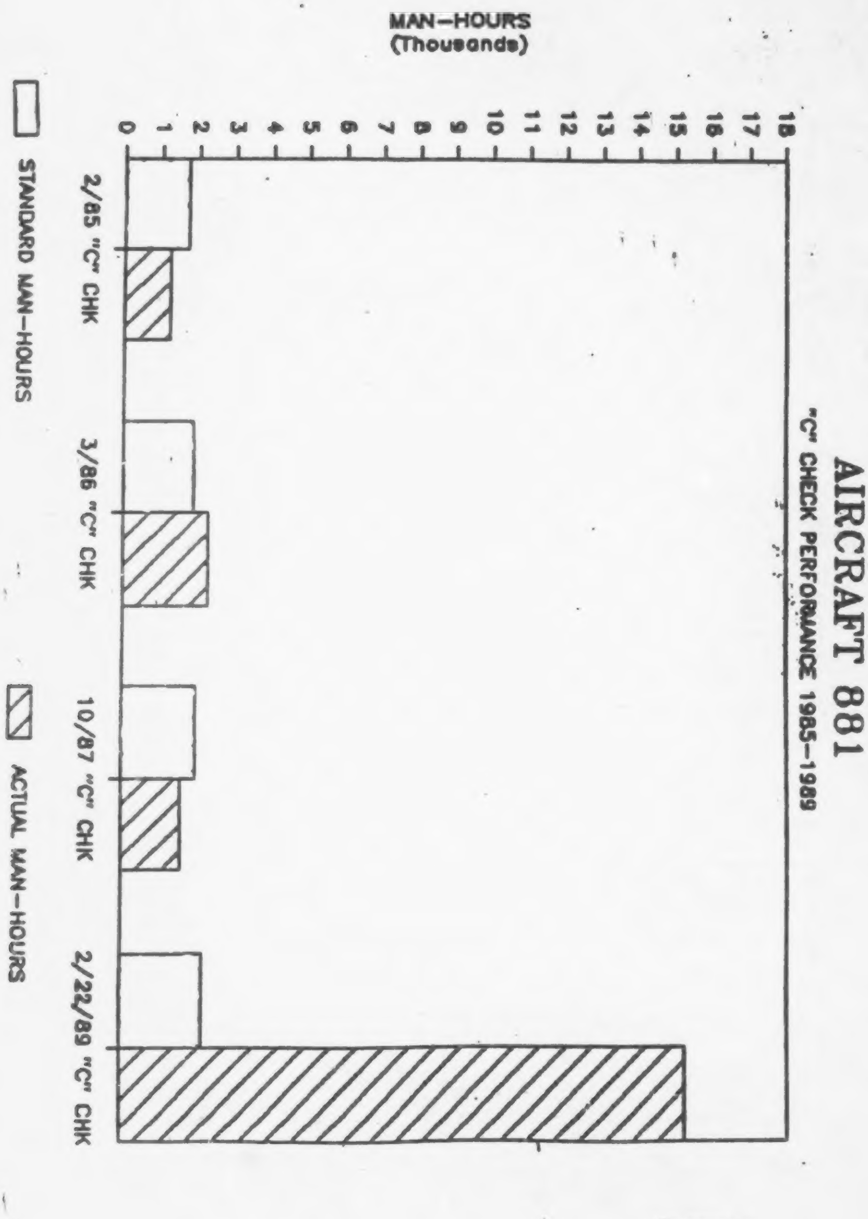


EXHIBIT D

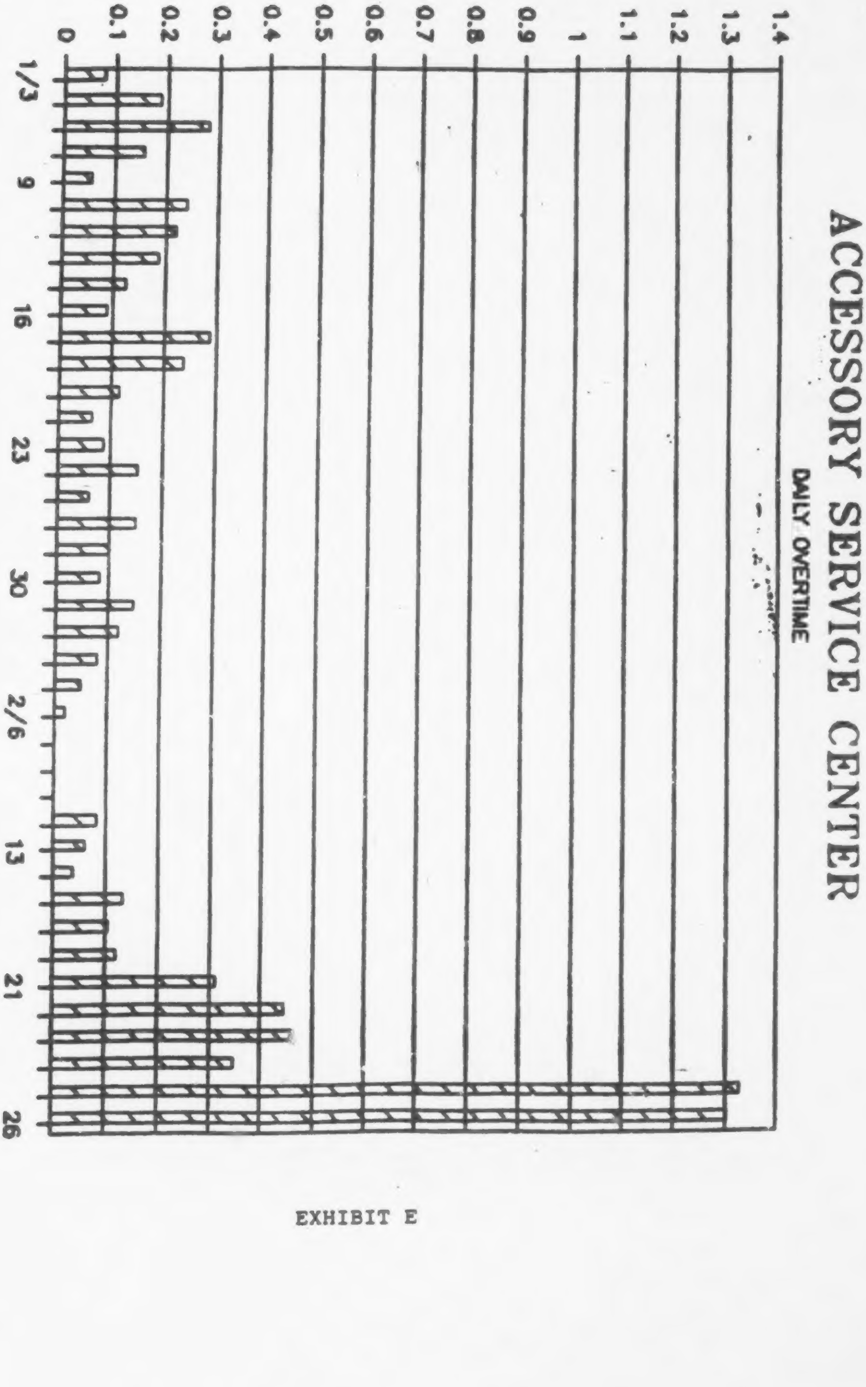
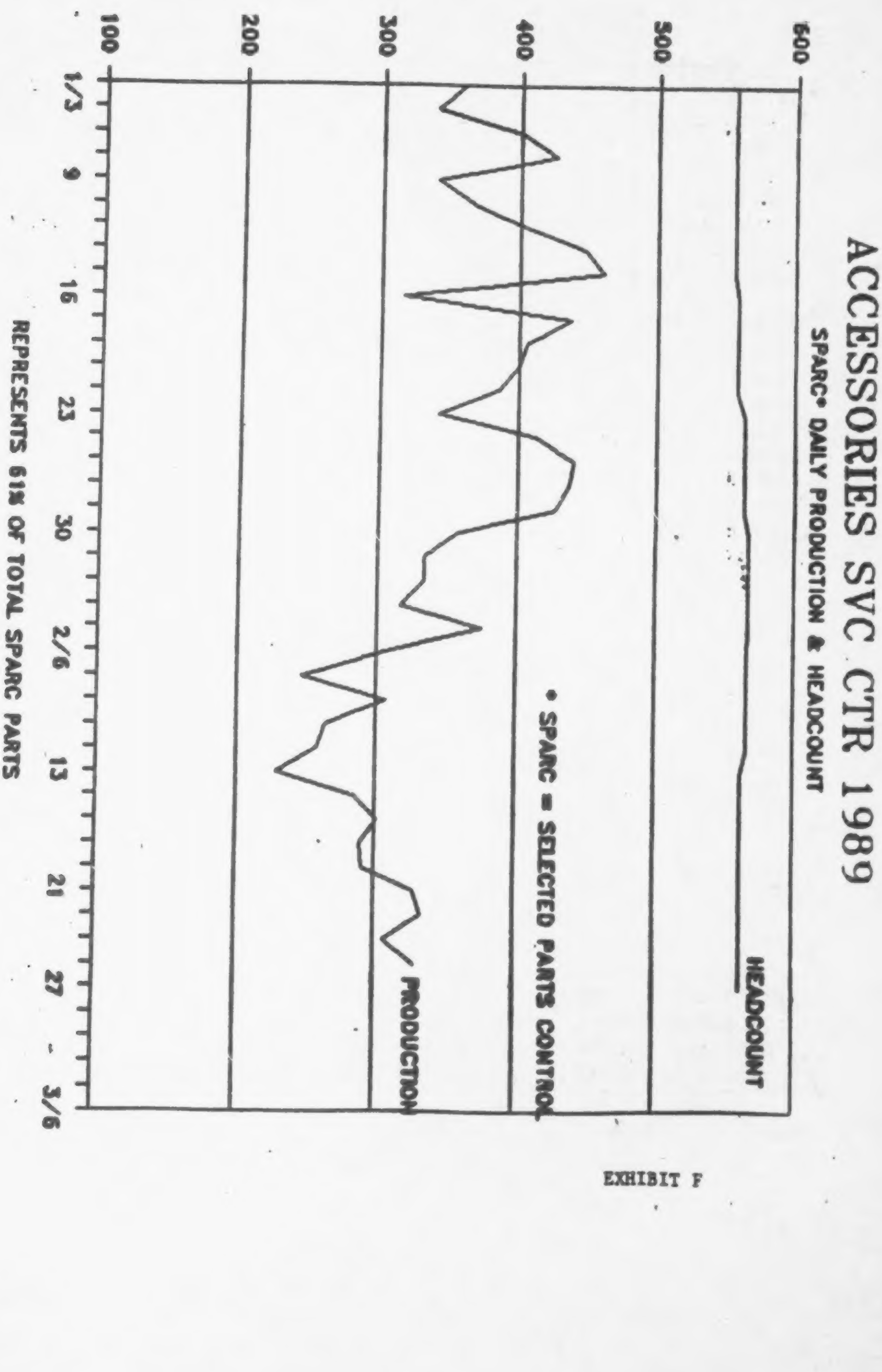

ACCESSORY SERVICE CENTER
DAILY OVERTIME
1.4
1.3
1.2
1.1
1
0.9
0.8
0.7
0.6
0.5
0.4
0.3
0.2
0.1
0
1/3
9
16
23
30
2/6
13
21
26
1989

EXHIBIT E

Attachment V
Page 15 of 18



ACCESSORIES SVC CTR 1989

SPARC* DAILY PRODUCTION & HEADCOUNT

* SPARC = SELECTED PARTS CONTROL

REPRESENTS 61% OF TOTAL SPARC PARTS

EXHIBIT F

Attachment V
Page 16 of 18

ENGINE BACKLOG

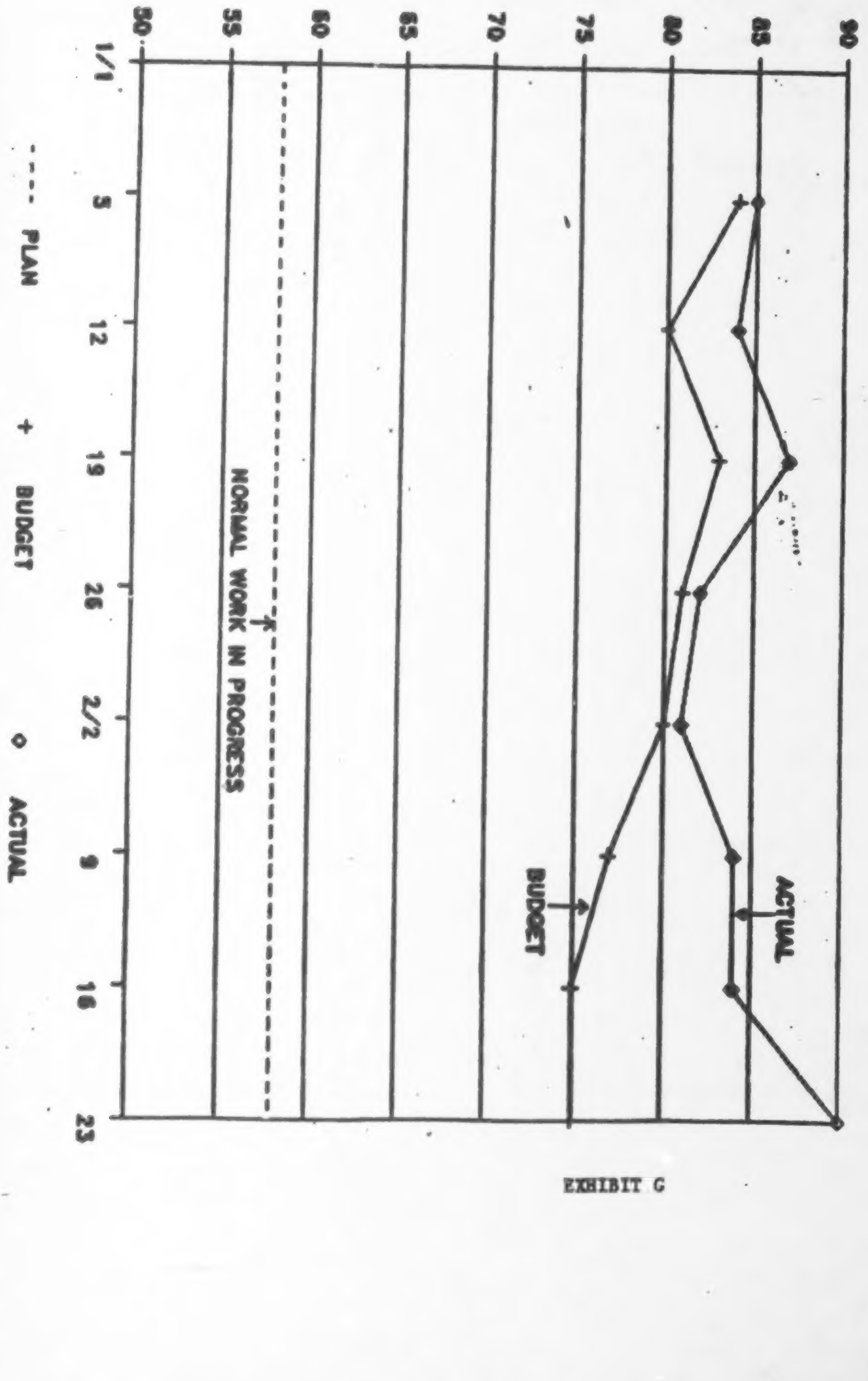


EXHIBIT G

Attachment V
Page 17 of 13

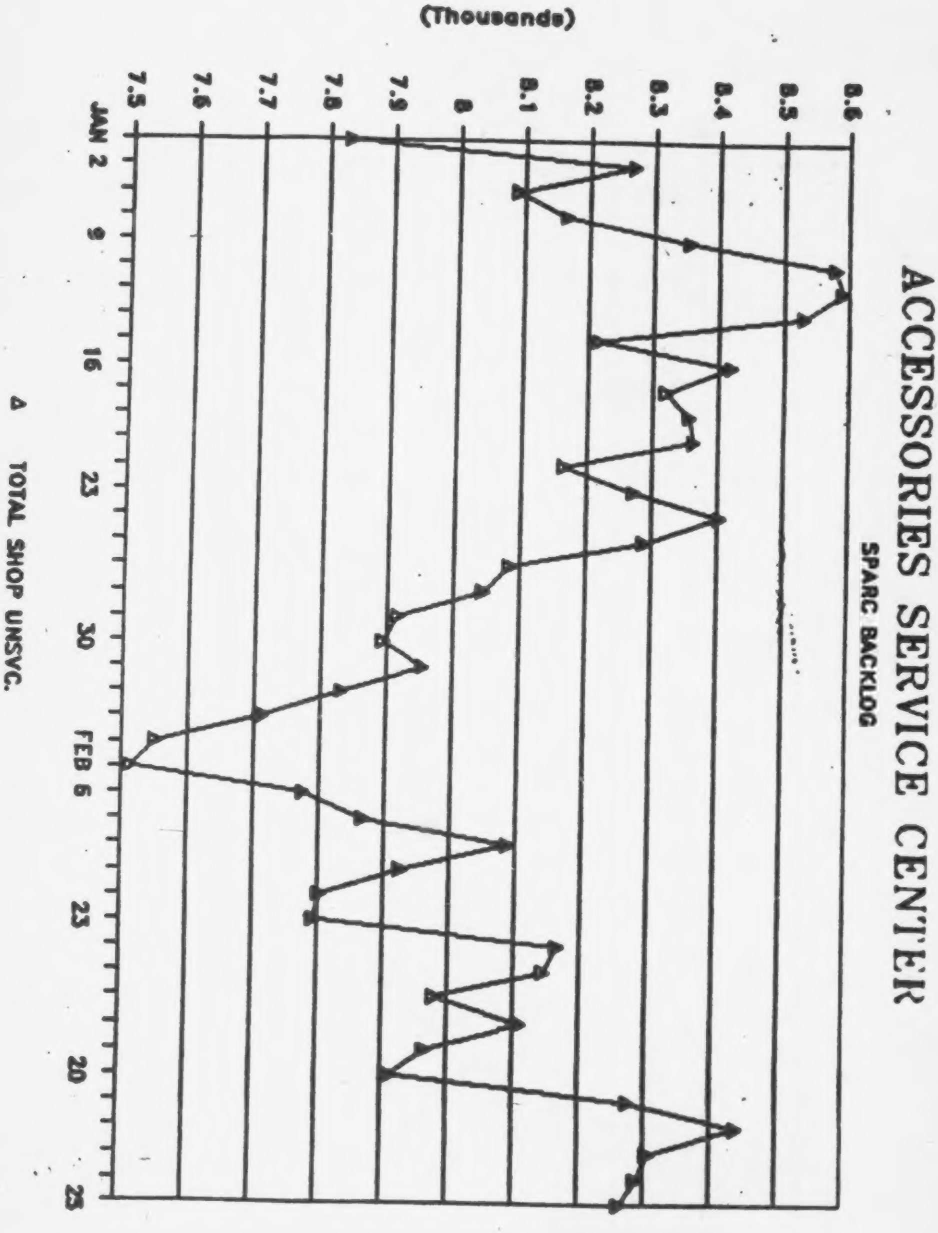
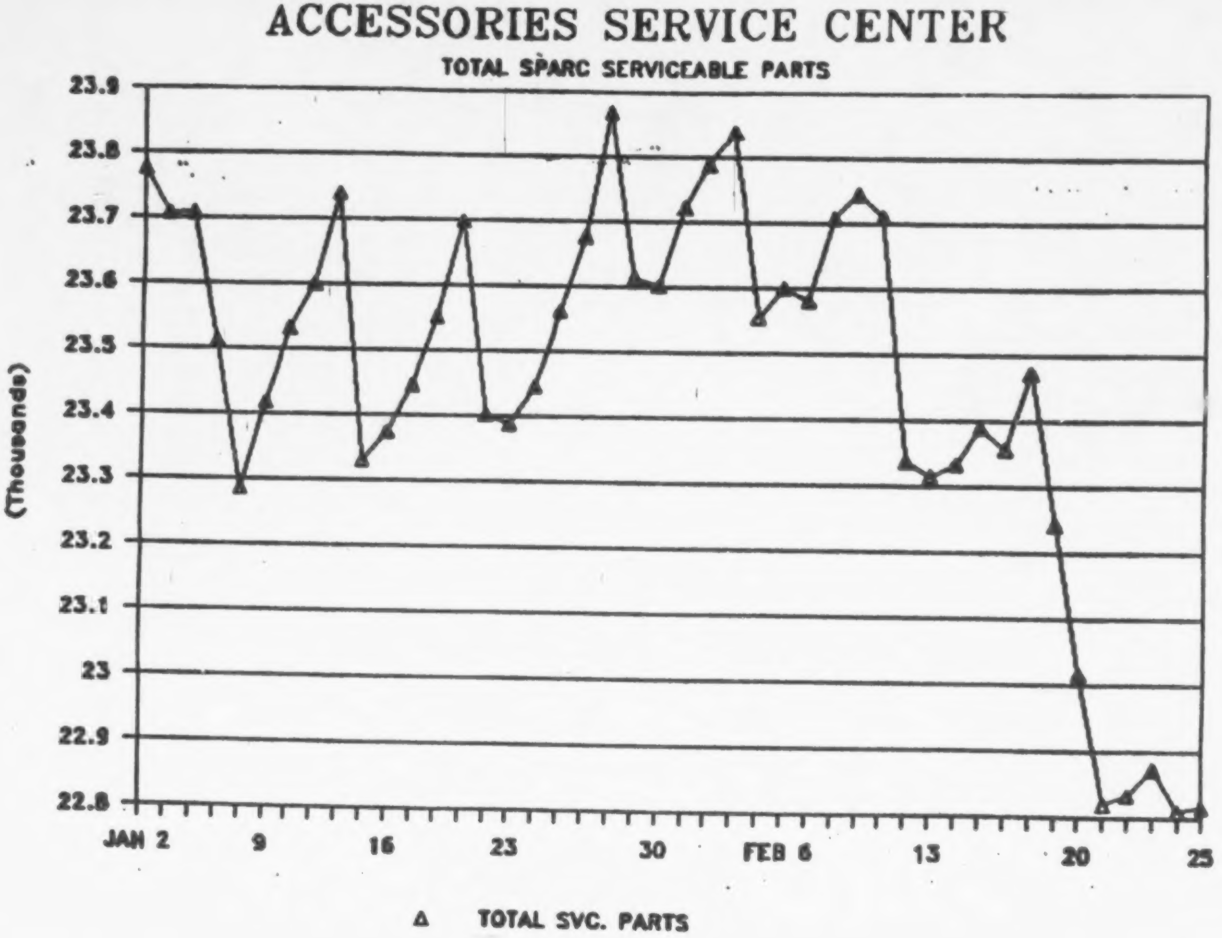


EXHIBIT H

Attachment V
Page 13 of 18


ACCESSORIES SERVICE CENTER

TOTAL SPARC SERVICEABLE PARTS

EXHIB:

Attachment VI
Page 1 of 1

BAGGAGE HANDLERS

HOURLY BASE RATE OF PAY (2)

7/01/87	$15.60 per hour (3)
1/01/87	15.15 "
6/01/86	14.85 "
1/01/86	14.42 "
7/01/85	13.34 "
4/01/85	13.12 "
2/01/85	12.55 "
1/01/85	11.82 "
7/01/84	11.82 "
1/01/84	11.41 "
7/01/83	12.99 "
1/01/83	12.72 "
1/01/82	10.51 "
7/01/81	10.16 "
1/01/81	9.76 "
7/01/80	9.43 "
1/01/80	9.24 "
7/01/79	8.95 "
1/01/79	8.76 "
6/05/78	7.78 "

ACTUAL COMPENSATION BEFORE BENEFITS OF A BAGGAGE HANDLER ON IAM NEGOTIATING COMMITTEE

1987	$48,262
1986	44,543
1985	36,500
1984	32,038
1983	32,657
1982	30,011
1981	28,552
1980	28,599
1979	25,268
1978	20,661

(2) Base pay of baggage handler with 4 years or more of service. More than 90 percent of Eastern's 5,000 baggage handlers received these rates of pay.

(3) This means that baggage handler pay has more than doubled during this period.

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TAC FUEL MANAGEMENT, INC.

o Description: The TAC Fuel Management, Inc. (TAC Fuel) is a wholly owned subsidiary of Texas Air Corporation which began operations in April 1987. There was no input capital. The claimed rationale for the creation of TAC Fuel was the reduction of fuel prices for Eastern and Continental through the larger combined volume of both carriers. (Snedeker deposition TR 45; Hartford deposition TR 217-40). In addition, TAC Fuel was to provide management expertise in fuel purchasing, transport, and negotiations, and make capital expenditures to further reduce the overall cost of fuel.

Mr. Foret, Senior Vice President of Finance and International for Eastern, and Mr. Shuyler, Vice President and Chief Financial Officer for Continental signed the contracts with Gregory Hartford, President, TAC Fuel Management (Hartford deposition, TR 37). Mr. Hartford reports to Mr. Snedeker of TAC. Mr. Snedeker said he received the idea for TAC Fuel from Foret, who was then at Eastern (Snedeker deposition TR 42), and that he (Snedeker) initiated the project. In any case, Snedeker hired Hartford (Hartford deposition TR 8), with TAC Fuel Management being an inactive shell at that time (Hartford deposition TR 9). Mr. Hartford has no contact with Mr. Lorenzo (Hartford deposition TR 10).

TAC Fuel has only four employees, but uses/controls other Continental/Eastern fuel staff (see summary of personnel and equipment provisioning agreement infra., Appendix 325, pp. 7-8). Continental and Eastern will not go out and enter into a fuel contract without the approval of TAC Fuel Management, but Continental and Eastern are the only signatories (Hartford deposition TR 19, 31).

o Terms: The contract terms for Eastern/Continental are the same (Hartford deposition TR 11, Eastern, Continental Contracts). Eastern and Continental will pay to TAC Fuel Management a fee of one cent per gallon for services, which shall be paid quarterly in arrears. The contracts are in effect from April 1, 1987-April 1, 1992, subject to an early termination clause if the carriers are dissatisfied with the performance of TAC Fuel (A004927-A004931).

o Benefits: Mr. Foret of Eastern estimated that this program, once fully implemented, would save Eastern up to .5 percent of its overall fuel cost. TAC Fuel receives from Eastern and Continental a one cent per gallon fee, of which one quarter of the fee is allocated to expenses, and three-quarters to capital expenditures to lower the effective cost of fuel (Hartford deposition TR 42; Foret deposition TR 118; TAC Fuel Management Corporation Charter). This fee allocation effectively precludes any flow of funds to the parent TAC holding company, since any paid-in capital funds must be used for capital investment purposes.

Mr. Shugrue claims Continental saves far more than the one cent per gallon fee (Shugrue deposition TR 59). Mr. Jordan also agrees, claiming the one cent fee is reasonable, a good value, and produces significant savings for Continental (Jordan deposition TR 96-98).

While TAC Fuel has indicated a revenue of almost $18.8 million for the period ending December 1987, the revenue for the most part represents accruals only; Eastern and Continental have not paid the full one cent fee (see below). Moreover, no capital expenditures have been made.

Mr. Hartford says that negotiating contract fuel prices is the major reason for the existence of TAC Fuel -- secondary markets (open market purchases) are important in that they tend to lower contract fuel price. (Hartford deposition TR 25; Snedeker deposition TR 47).

The claimed rationale for TAC Fuel was to combine Eastern's and Continental's purchases to wrest concessions from fuel suppliers. Yet, Eastern's demand by itself--without supplementary Continental demand--was sufficiently large that no increased buying power could be attributed by adding Continental (FPP, Eastern, at p.19.)[1] The major goal was to develop and utilize to a greater extent the existing buying power. (Id.)

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[1] Fuel Purchasing Procedures (FPP), prepared for Eastern Airlines by John G. Yeager & Associates (Inc.), August 1986; for Continental, in June 1986.

At the time the FPP studies were completed (June-August 1986), Eastern had 18 points in which the consultant determined it was a very large consumer, Continental had 8 points (FPP, Eastern at p.12). Eastern had a subsidiary, Terminal Storage Company, with a charter to buy/sell in the marketplace and engage in supply transactions, and did ship products on many pipelines in the country (Id. p.15).

However, there were few examples where Eastern took advantage of geographical price differences (Id, p.16). Such examples were fewer still for Continental (FPP, Continental, at p.7).

The thrust of both consultant studies was that it may be necessary to make only a small portion, or perhaps none, of the carrier's fuel purchases outside the contract system to win significant price reductions from suppliers (FPP, Eastern p.26).

Mr. Hartford details the savings per gallon, for those gallons acquired via alternate means, at 1.46¢ per gallon for Continental and 1.24¢ for Eastern. (Hartford Reading File letter to Snedeker dated March 16, 1988, CA 000332-334.) The charged cent per gallon is thus quite reasonable for those gallons acquired.

However, TAC Fuel receives 1¢ for every gallon lifted by Continental and Eastern within and outside the contract system. The accrued cost to Eastern for the period August-December 1987 approximates $4.8 million, the savings August-March 15, 1988 approximates $2.0 million. Continental, accruing about the same amount, saved $2.9 million in fees this period. (The savings would probably accrue to Continental to a greater extent than Eastern, because of Eastern's historically greater involvement in fuel management).[2]

At this time, Eastern has not paid any of its agreed levy to TAC Fuel, Continental has paid but two quarters (Hartford deposition TR 49). Both carriers have accrued the liability, however, and may have also accrued the charges to TAC Fuel for personnel and other expenses. (Letters to R.S. Andersen from P.A. Western for Eastern, document No. A004936 and A004838).

- Union Argument: Touche Ross on behalf of ALPA states that: "Eastern paid TAC approximately $9,100,000 in fees for TAC's administrative and fuel purchasing services for Eastern in 1987; Continental paid TAC similar amounts in 1987 for these services. It is particularly interesting to observe that neither airline is capable of purchasing fuel at competitive prices without TAC's services, and that neither airline thought of pooling their purchasing power so that if savings were available, the savings would be earned by the airlines directly." (Touche Ross Analytical Synopsis Regarding Texas Air and Airline Subsidiaries, April 25, 1988)

As noted above, Eastern has not made any payments to Texas Fuel Management to date and Continental has made payments for only two quarters.

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[2] Continental had no fuel management subsidiary, and also lacked sufficient management staff in the fuel area. "Manpower contracts presently prevent CO from pursuing those analytical and operational projects that EA routinely studies" (Memo from Hartford to Snedeker, May 5, 1987, at 6 (CA000316).

- SUMMARY OF CONTRACT TERMS FOR EASTERN/CONTINENTAL AND TAC FUEL MANAGEMENT INC:

  - Services Provided: Negotiations and administration of the carriers' product requirements, including terminaling and through-put contracts, transport, storage and into-plane contracts, fuel system management and operating contracts, and fuel system interline; user and lease contracts; administration of bonded fuel, other products, and subsidiaries; management of investments directed toward reducing product cost; and preparation of reports, forecasts, and compliance and planning for tax and license requirements.

  Procedure: Contract terms limited to one year, hedge positions limited to ten percent of yearly requirements; inventory not to exceed a 10-day supply, loss on hedge positions limited to five cents per gallon, supply arrangements limited to 50 percent of yearly requirements, and open positions on Mercantile Exchange limited to 500 contracts (500,000 barrels).

Payments: Fees to be paid quarterly in arrears equal to .01 times the number of gallons actually used. (Payment based on planned usage during the quarter, adjustment to actual usage to be made within 60 days after the quarterly payment.)

Early Termination: If dissatisfied, notice must be given as to the reason for such dissatisfaction. If not remedied within 60 days, written notice given can terminate not less than 30 days after notice. (Source: Fuel Service Agreement between Eastern and TAC, Fuel Management, Inc., Source Nos. DN004515-DN004522; A004927-A004935).

- SUMMARY OF PERSONNEL AND EQUIPMENT PROVISIONING AGREEMENT BETWEEN TAC FUEL MANAGEMENT, INC. AND EASTERN/CONTINENTAL

1. Personnel: Named persons in agreement, plus additions, deletions if necessary. Persons were from carrier and currently provided fuel management for the carriers.

2. Reimbursed Costs: Personnel costs (including fringes); supplies, space, and equipment utilized by personnel; any other costs directly attributable to employees.

3. Personnel Relationship: Personnel under direct supervision of TAC Fuel Management, with carrier reserving right to assign, transfer, promote, and dismiss employees.

4. Cost Reimbursed: Carrier shall invoice TAC Fuel Management monthly for Reimbursed Costs, payable within 30 days after receipt. (Source: DN004510-DN004514, or A004922-A004926).

PROPOSED SALE OF EASTERN SHUTTLE

o DESCRIPTION: On February 5, 1988, Eastern entered into an agreement with Texas Air Corp. pursuant to which Eastern agreed to sell the net assets of its Air Shuttle division to a newly-organized subsidiary of TAC for an aggregate sum of $225 million. Of the total amount, $125 million would be paid in cash and $100 million in 10-year notes. Eastern's major reason for the proposed sale was a desire to improve liquidity in preparation for a strike (Bakes deposition TR 175, 178). Furthermore, [redacted] Since the Shuttle was an "attriting" asset, the time to sell was right (Bakes deposition TR 178). From Eastern's vantage point, the "ideal" solution was to structure a deal where the Shuttle had an ownership connection and a marketing connection with Eastern (Bakes deposition TR 180).

The transaction was enjoined by the U.S. District Court of the District of Columbia, but the Court of Appeals has granted Eastern an expedited hearing to consider lifting the injunction. The hearing was set for May 5, 1988 (EA 1987 10 K pp. 10-12 & p. 49).

[redacted]).

o Valuation: The $225 million value was reached in negotiations between Eastern and Jet Capital/Texas Air Corp. with the involvement of two investment banking firms (Bakes deposition TR 173). According to a written Consent to Action by the Jet Capital Board (A004861-A004866) negotiations between Jet Capital and Eastern began in November 1987. The value of the Shuttle was discussed at the fall 1987 "chunking" meeting of top Eastern and Texas Air Corp. officials. Value estimates ran from $150 million to the mid-$200 millions. In Mr. Ferguson's words "I don't think Jet Capital, per se, ever came up" (Ferguson deposition TR 52-53). All realized the advantages of selling it within TAC, and no bids were solicited outside TAC. Rumors in the marketplace about a possible Shuttle sale for about $100 million never drew a qualified offer from anyone else (Bakes deposition at 182-3).

Eastern would receive $225 million, $100 million in securities, which would bring $25 million annual interest, while retaining its access to the frequent flyer program and holding assurance that the Shuttle would not be sold to a competitor for a 15-year period. (Lorenzo deposition TR 117-129 and Foret deposition TR 105).

Inherent in the $225 million figure is the value of the slots. Under the terms of agreement, the following slots and gates are to be transferred: 60 slots at LaGuardia, 32 slots at National, and 8 gates at Logan, LaGuardia and National. The market franchise is really the slots (Lorenzo deposition TR 117-129). Ferguson assumed the gate value was $90-$150 million and the slot value $65-$90 million (Ferguson deposition TR 141).

The purchase price of $225 million was deemed "fair" by Merrill Lynch Capital Markets and by Bear, Steans and Co. Both issued opinions on the transaction. No other opinions were sought nor were attempts made to sell to outside buyers. [2]

(In a letter dated April 22, 1988, to Rosalind Knapp, [redacted] [redacted] submitted copies of studies undertaken in 1986, which presented a range of values for Shuttle operations from a negative $30.6 million to $115.5 million, depending on various yield, fuel cost, and load factor assumptions).

o Terms: According to Eastern's 1987 10-K filing with the SEC and the Expected Purchase Agreement, the complete terms of the Shuttle sale were as follows:

> (1) Eastern would receive $125 million in cash with a balance in 16.5% subordinated promissory notes maturing in 1998 with interest payable semiannually. (10K p. 11, EPA, A005013).

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[2] Eastern was concerned that a general bidding contest to outside buyers would set off certain forces, including time delayed negotiations, competitors circulating rumors about Eastern's cash needs, and travel agent suspicions (Bakes deposition TR 180).

2) Air Shuttle would lease nine 727-200 aircraft and spares from Eastern at market rates. Rental payments would aggregate $15.6 million per year. (10K p. 11, EPA, A005028).

(3) Air Shuttle would enter into a marketing agreement with Eastern to participate in the "One Pass" frequent flyer program for up to 15 years. For the first three years Air Shuttle would pay Eastern $750,000, $1,000,000 and $1,250,000 for its share of administrative expenses associated with the "One Pass" program (10K p. 11, EPA, A005027).

(4) Eastern would be responsible for bearing costs (not to exceed $8 million) of bringing leased aircraft into compliance with Boston's noise regulations (10K p. 11, EPA, A004996-A004998).

(5) Texas Air could not sell the Shuttle to a third party without the consent of Eastern, unless TAC were willing to pay substantial penalties (10K, p. 12).

(6) Air Shuttle would hire the same number of Eastern Shuttle employees, and initially on the same terms and conditions as they were employed by Eastern at closing. Eastern would be responsible for certain pension benefits (10-K, p. 12).

(7) In the event the transaction is not consummated, Eastern would be obligated to pay TAC and Air Shuttle for reasonable fees plus $2 million (10-K, p. 12).

o Benefits: According to Mr. Foret, Senior Vice President of Finance and International at Eastern, the structure of the Shuttle sale to TAC would have had the following advantages for Eastern:

o The $225 million infusion was worth 17 percent in interest expense avoidance, that is, the sale was a way of raising cash without going to the marketplace with a debt offering, which in itself might not have been possible given the lack of collateral.

o The Shuttle was uniquely severable from the rest of Eastern's operations without negatively impacting passenger flows from/to other markets in the system.

o Eastern would retain the [redacted] in "halo" revenue on the rest of its system generated by the "One Pass" frequent flyers on the Shuttle.

o It would allow Eastern to place with the Shuttle 17 aircraft that are uniquely configured for shuttle services. TAC agreed to lease those airplanes, engines, and spare parts, producing another source of revenue for Eastern, more than covering the ownership cost of the airplanes.

o It would allow Eastern to avoid the severance expenses of furloughing 1,000 Shuttle employees or carrying the unneeded people on the payroll, since Eastern employees could go to the new company if they wished.

o It would prevent any other airline from benefitting from the frequent flyer aspects of the Shuttle for 15 years.

o It would effectively preclude the sale of the Shuttle to Eastern's four major competitors for 15 years or, if such a sale were attempted, it gives Eastern the right of first refusal to buy the Shuttle back.

o While Eastern was convinced that $225 million was a very high value for the Shuttle, just to make sure it was not quickly resold for a profit, the agreement provided that the Shuttle could not be sold to any unaffiliated party for three years (unless forced by banks to do so) or if sold within five years Eastern would share in any profits from such a sale -- 100 percent for the first three years, 50 percent during the fourth year, and 25 percent during the fifth year (Foret deposition TR 101-108).

Who negotiated: It is unclear who initiated the proposed sale of the Shuttle. Representatives of Jet Capital and Texas Air Corp. and Eastern/Jet Capital documents (A004861-A004866) suggest that the idea may have originated with Jet Capital. The first serious suggestion apparently came from Joe Leonard, Chief Operating Officer at Eastern (Bakes deposition TR 173). Eastern's management and Board of Directors liked the deal, thought it was very fair, and did not want to go through a public sale (Lorenzo deposition TR 117-129).

TAC, while not originally involved in the negotiations for fear of a negative reaction from the employees of Continental, entered into a partnership arrangement with Jet Capital for two primary reasons. First, unlike Jet Capital, TAC had an enormous net operating loss carry-forward which could be applied to shelter profits from the Shuttle operations. Second, TAC concluded that a Jet Capital purchase would create an impression that Texas Air was not committed to operate Eastern (Goolsbee deposition TR 22-25).

TAC for its part would acquire 95 percent equity interest in Air Shuttle Holdings, Inc. for a cash outlay of $20 million. Air Shuttle Capital, Inc., a wholly-owned subsidiary of Air Shuttle Holdings, would be responsible for the payment of interest on the 16.5 percent notes. Jet Capital would receive a 5 percent equity interest.

Representatives of Eastern and TAC acknowledge that the Eastern Shuttle had been consistently profitable over the years. Ferguson noted it generally earned about [redacted] (Ferguson deposition TR 115.)

o Union Argument: ALPA and the IAM note that the Eastern Shuttle is one of the few profitable parts of Eastern's system. They characterize it as the "crown jewel" of Eastern's flight operations due to its profitability, market identity and control of scarce takeoff and landing slots at LaGuardia and National.

The IAM also noted that over 90 percent of the $225 million sales price was to be financed by borrowings, making the Shuttle financially unstable if it proved to be unprofitable or, if profitable, simply a reduction to Eastern's profitability.

Finally, IAM argued that Jet Capital would get fees of up to $1.5 to $2 million whether or not the Shuttle transaction actually occurs. If the deal does go through, Jet Capital gets a 5 percent ownership stake which they term a windfall.

ALPA has indicated that as a result of the sale, it would seek a strike authorization vote of Eastern's pilots, while Eastern claims that such a strike would be illegal (Appendix 343, Appendix 6B p. 3 therein).

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GENERAL MANAGEMENT AND ADMINISTRATIVE FEES

o Description: In addition to specific fees, such as the fuel fee paid to TAC Fuel Management, Eastern, Continental, and SystemOne Holdings pay general management and administrative fees to the Texas Air Corporation. The concept behind these fees is that TAC incurs various administrative and overhead costs associated with its responsibilties as parent to the subsidiaries and in connection with maintenance of their liquidity (letter to Eastern from Charles Goolsbee, TAC, December 23, 1986).

o Benefits: TAC serves as overall financial manager in areas such as aircraft purchasing and financing, SEC filings, investor relations, government relations, and a lender of last resort (Goolsbee, Opening Briefing to DOT in Houston April 22, 1988 and Foret deposition TR 60-63).

o Terms: Apparently, there is no formal contract governing management fees (Foret deposition TR 62). During 1987, Eastern paid a monthly fee of $500,000, Continental $400,000, and SystemOne $100,000. This fee structure was not based on a specific cost formula, but rather on the relative size of the subsidiaries when the fees were established. TAC might consider reassessing the fee expense allocation for 1988 (Ferguson deposition TR 142-146). Mr. William Holland of Arthur Andersen and Company prepared an analysis of TAC's (parent company only) operating expenses. For 1987, total expenses (net of direct billings) were $12,020,000. This figure was verified by the DCAA auditors (See Appendix 343, Appendix 6E therein). Comparing this to the total fees received from the subsidiaries ($12 million), TAC essentially breaks even. Mr. Holland stated, based on his experience in analyzing other holding companies, that most holding companies base their management fees on a percentage of a subsidiary's revenues, and they expect and get a sizeable profit (Holland Interview).

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AIRCRAFT TRANSACTIONS

o Description: During 1986 and 1987, there were three significant aircraft transactions between Eastern and Continental. In 1986, Eastern sold one DC-10-30 aircraft and approximately $1 million of related spare parts to Continental for $33 million. In 1987, Eastern leased to Continental six A-300-B4 aircraft for a period of four years at a monthly rental of $225,000 per aircraft and, during the same year, Eastern leased from New York Air (a subsidiary of Continental), five DC-9-51 aircraft for a period of one year. The impetus for these transactions was from the staffs of Eastern and Continental, not Texas Air Corporation (Ferguson deposition TR 90-94).

o Who negotiated: The aircraft sales and acquisition function is at Texas Air Corporation, not Eastern or Continental. Eastern and Continental decide what is needed, but the transaction is handled by TAC (Kunstler deposition TR 15). James Arpey, Senior Vice President at TAC, is responsible for overall fleet planning and remains in constant touch with the aircraft market to respond to carrier needs (Ferguson deposition TR 90-94).

o Valuation: Eastern routinely obtains an aircraft appraisal as to fairness.

(1) Eastern Sale of DC-10-30 to Continental

o Description: In October 1986, Eastern sold one DC-10-30 aircraft and approximately $1 million of related spare parts to Continental for $33 million (EA 1987, 10-K, p. 49). This aircraft was surplused with the discontinuation of Miami-London service on which Eastern lost approximately $16 million during the 14 1/2 months of operations. Prior to the transaction, Eastern requested and received an opinion confirming the fairness and reasonableness of the transaction from the financial analysis firm of Duff and Phelps (Duff and Phelps letter to Eastern, September 16, 1986).

o Benefits: Eastern received $33 million in cash, representing a capital gain of $5 million (EA-3, p. 4).

o Terms: Continental made an initial cash downpayment of $7,291,330.61 to Eastern; reimbursed TAC for a deposit of $500,000 in August 1986; is financing $25,208,669.39 over 12 years at 9.55 percent through American Express Bank, Ltd. (October 7, 1986 memo from Mike Cox to various accounting and management personnel). The contract price was later adjusted by $661,749 in favor of Continental for various maintenance and overhaul considerations (letter to James Arpey from George Dutton, November 5, 1986).

(2) Eastern Lease of Six A-300-B4 Aircraft to Continental

o Description: In February 1987, Eastern leased to Continental six A-300-B4 aircraft (with an option to purchase).

o Terms: The lease was for a period of four years from the date of delivery at a basic monthly rental of $225,000 per aircraft (EA 10-K 1987, p. 49; Lease Agreement dated February 11, 1987). The agreement also contains a purchase option with a purchase price of $22,830,000 per aircraft. At the time of the transaction, Eastern obtained an appraisal confirming the fairness of the transaction (EA-3, p. 5).

o Valuation: An AVMARK report on the appraised value of Eastern's A-300-B4 aircraft dated February 9, 1988 shows these aircraft having a value of $24-$25 million each.

o Benefits: Eastern was able to reduce excess wide-body capacity and to provide a monthly inflow of cash at $225,000 per aircraft or $16.2 million annually to service debt. Eastern's management believed that the leasing of these aircraft to Continental would not only improve the company's profit performance by helping to satisfy fleet requirements, but contribute a steady stream of rental income to help cover the debt service (memo for Board of Directors meeting, March 3, 1987; A00 4743). Eastern receives $3 million annual inflow. Eastern has estimated a profit improvement from the A-300 fleet reduction at [redacted] in 1987 and [redacted] in 1988. (A004746).

(3) Eastern Lease of Five DC-9-51 Aircraft from New York Air

o Description: In October 1987, Eastern leased from New York Air (a subsidiary of Continental) five DC-9-51 aircraft for a period of one year from the delivery date with renewal options (EA, 1987 10-K, p. 49; sublease and lease agreement dated October 23, 1987).

o Terms: Eastern paid $6.3 million upon delivery of the aircraft ($1.26 million per aircraft) and approximately $80,000 per month per aircraft in rental fees (EA, 1987 10-K, page 49). The $1.26 million amount represented a reimbursement to New York Air of amounts paid by New York Air to TranStar Airlines Corporation to secure an assignment of the lease (letter from New York Airlines to Eastern Air Lines, October 23, 1987).

o Valuation: Eastern obtained a rental fairness opinion from AVMARK confirming this transaction. (See Appendix 343, Appendix 5 therein, p.2).

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o **Benefits**: Eastern's purpose for leasing the DC-9-51 aircraft was to gain additional narrow-body equipment and the cost efficiencies of this type of aircraft. From Eastern's standpoint, the transaction appeared attractive because of the short-term renewable options, below market monthly rentals of $80,000 per aircraft (with an effective lease rate of 6.97 percent) and small up-front cash payments (EA-3, p. 6). Eastern receives a $15.9 million annual inflow.

Other: Some of the aircraft sale and lease transactions appear to be very circular. Since Continental integrated New York Air, it is effectively renting some aircraft from itself. These are transactions resulting from the integration of the carriers, and Continental intends to unwind the transaction, which has no economic substance today. (Ferguson deposition TR 97).

In 1987, TAC received $119.6 million in revenues on aircraft rentals from Continental (including People Express and New York Air) on 55 aircraft. Fifty-one of these rent for $114.3 million, but cost TAC only $111 million. TAC receives $60,000 per aircraft per year profit. TAC was forced into the aircraft leasing business when Continental could not acquire aircraft on its own due to its bankruptcy proceedings (Opening Briefing to DOT in Houston, April 22, 1988; Ferguson deposition TR 101).

o Union Argument: ALPA has stated that Texas Air has cost Eastern $300 million in lost revenue in 1987 through sale and lease of 18 aircraft. It further stated that during 1987, Eastern disposed of -- either through sale or lease -- 18 aircraft, which represents approximately a $300 million loss in annual revenue to Eastern. Included in this disposition was the transfer and lease, with option to purchase, of six Airbus A-300 aircraft to Continental. In addition, prior to being acquired by Texas Air, Eastern sold one DC-10-30 and related parts to Continental for $33 million.

Upon our review, we have found that from late 1986 through 1987 Eastern's operating fleet was reduced by three aircraft. There was a net exchange of two aircraft between Continental and Eastern and one aircraft that was severely damaged in December 1987 was declared a total loss. However, Eastern Air has sold 10 aircraft to be delivered in 1988. (EA-3, p. 1 and Eastern 10-K for 1987 at p. 13).

The DCAA auditors found no basis for questioning the fairness and reasonableness of these aircraft transactions (See Appendix 343, Appendices 4 and 5).

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INTERCOMPANY SLOT TRANSACTIONS

o Description: Since 1986, Eastern has transferred 67 slots to Continental and Continental has transferred 63 slots to Eastern. These slot transfers involved the following airports:

	From EA to CO	From CO to EA
DCA	20	25
LGA	39	35
JFK	3	3
ORD	5	0
Total	67	63

o Costs: The value of the 67 slots transferred from Eastern to Continental was $35.2 million, while the value of the 63 slots transferred to Eastern from Continental was $34.9 million. The difference between the values resulted in a net inflow of cash to Eastern of $300,000 (Continental Airlines, Inc., Treasury Department, April 19, 1988; EA-3, p. 9).

o Who negotiated: Negotiations involving slot values were handled by Mr. Birdsall Senior V.P. Marketing and Planning of Continental and Mr. Kunstler Senior V.P. Planning of Eastern (Kunstler deposition TR 77).

o Valuation: According to Mr. Kunstler, determination of the slot values was based on a formula derived in part from the Pan American shuttle slot acquisition. Eastern and Continental agreed to a base slot value of $600,000 which would increase in value by factors of 1.2, 1.3, 1.4, 1.5, and 1.75, depending on time-of-day value of a slot (Kunstler deposition TR 78-80). Mr. Kunstler's recollection is somewhat inconsistent with a Continental summary of the slot transactions which states that the base slot value was $500,000, with incremental increases in value (Reply to DOT Request A.4, Continental Airlines, Inc., Treasury Department, April 19, 1988, B000172; A004485). The DCAA auditors indicate that the slot transactions appear to be "fair and reasonable to both" carriers (See Appendix 343, Appendix 4, p. 3 therein).

o Benefits: The major purpose of the slot transfers was to improve the route structures of both carriers. As Mr. Kunstler stated in his deposition, "Shortly after the acquisition was approved, it became apparent that it would be convenient for Eastern and Continental to trade slots from schedule to schedule, to facilitate our shifts at LaGuardia and Washington National and Chicago and Kennedy and to facilitate theirs" (Kunstler deposition TR 76).

o Union Argument: ALPA has stated that Eastern has reduced its takeoff and landing slots at three of the four capacity-controlled airports -- LaGuardia, Kennedy and O'Hare -- from December 1985 to October 1987 by an average of 24% and many of these occurred through slot transfers between Eastern and the various airlines which currently make up Continental. (Attachment to March 17, 1988 letter to Congress entitled "Crisis at Texas Air Corp., March 1988).

As shown on page 1, the net value of slot transfers between Continental and Eastern since TAC acquired Eastern have been relatively insignificant and have presumably benefitted both carriers.

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Page 1 of 2

INTERCOMPANY GATE TRANSACTIONS

Description: On January 5, 1987, Eastern agreed to sell to Continental 16 gates at Newark International Airport. Eastern received five gates through a trade, resulting in a net sale of 11 gates to Continental.

Terms: The purchase price was $1 million per gate for a total of $11 million to Continental. Eastern received a 10 percent promissory note payable through 1998, paying monthly principal and interest (EA-3, page 11; Response of Continental Airlines, Inc., to DOT Information Request, pp. B000169-B000170).

Valuation: The price per gate on this transaction was the same as that paid in a five-gate Pan American/New York Air transaction in 1985, as well as a similar transaction between American and Trans World in late 1985. (Foret deposition TR 55; Shuyler deposition TR 22-25; Reply to DOT Request A.4; Continental Airlines, Inc. Treasury Department, April 19, 1988, p. B000174). In addition to Eastern having excess gates at Newark, Mr. Foret pointed out that a new terminal with 42 more gates would soon be opening at Newark, which would affect gate demand that was "not that great to begin with" (Foret deposition TR 41).

Nonetheless, the DCAA auditors pointed out that in March 1987, AVMARK appraised the Newark gates at $2.05 million each, and that AVMARK's appraisal indicated that Eastern itself had placed a value of $1.875 million for each gate (See Appendix 343, Appendix 4, p. 2 therein).

Benefits: Similar to the slot transfers and international route transfers, the purpose of gate sales and trades was to improve each carrier's route and schedule structure. In the case of the Newark gate sales, Eastern eliminated excess gates that were underutilized based on 2.1 flights per day at Newark compared to 6.8 flights at the Atlanta hub (EA-3 p. 11). Besides realizing income from the note, Eastern benefitted by being able to reduce its annual operating expense by about $4 million (Foret deposition TR 41).

Union Argument: ALPA has pointed out that only a few months earlier Eastern sold 8 gates and other facilities at Charlotte to Piedmont for $25 million. ALPA Letter to Congress, March 17, 1988, "Crisis at Texas Air Corp." Attachment p. 3).

INTERNATIONAL ROUTE TRANSFERS

o Description: Eastern and Continental now have dual certificate authority for Eastern's international routes from DOT as a consequence of Eastern's acquisition by TAC. Either of the carriers can serve the routes, but they cannot do so concurrently. The purpose of dual certificate authority is for "regulatory convenience and flexibility" (Bakes deposition TR 142).

The international route transfers (or potential transfers) between Continental and Eastern involve four routes or marketing areas:

o U.S.-Canada: Eastern had been operating a Orlando-Washington/ Baltimore-Ottawa route. The route could be served to/from either Baltimore or Washington. Eastern also had certificate authority to operate Washington/Baltimore-Montreal, but was not serving this route. When Continental began to build a hub at Dulles, it expressed an interest in operating the Canadian routes. Since Eastern considered its Baltimore-Ottawa route marginal, it discontinued service and Continental began to operate both Washington/Dulles - Ottawa and Washington/Dulles - Montreal services. After Continental began to dismantle its Dulles hub, Eastern reinstituted Baltimore-Ottawa service (Kunstler deposition TR 69-70).

o Miami-London: Eastern ceased Miami-London service in October 1986 because it lost approximately $16 million during the 14 1/2 months it operated the route (EA-3, page 4). There were three other competitors, including the British low fare carrier Virgin Atlantic. This is a discretionary, low yield market, apparently served economically only with B-747 equipment. Continental began services over this route on June 1, 1987, and is currently serving it with B-747 equipment (Kunstler deposition TR 66). Eastern sold the DC-10-30 it had used on the route to Continental in October 1986 for $33 million cash, a capital gain to Eastern of $5 million (EA-3, page 4).

o U.S.-Mexico: Continental has replaced Eastern on five routes to Mexico. Eastern had ceased operations to Mexico because of a strike by Eastern's Mexican employees. Eastern always lost money on the Mexican routes and had no interest in reentering the Mexico market. (Bakes deposition TR 145 and Kunstler deposition TR 62). The routes were, therefore, not useful to Eastern. Mr. Bakes claims they were a liability, not an asset. (Bakes deposition TR 145).

o Central/South America: Eastern has no plans to sell or transfer these routes (Bakes deposition TR 148) and has no plans to "donate" these routes to Continental or anyone else (Bakes deposition TR 143). [redacted]

As far as we could determine, the route transfers from Eastern to Continental were not instigated by Texas Air Corporation. Eastern and Continental coordinated all discussions and mutually agreed to the transfers. There has been no transfer of cash in exchange for the routes (Ferguson deposition TR 84-86). Nor was any effort made to sell the routes to competitors. One might argue that, if Continental and Eastern were not affiliated companies under TAC, these routes might have been sold for cash (similar to other route sales such as Pan American's sale of its Pacific Division to United). On the other hand, route transfers within the corporate framework of TAC allows Eastern to retain some residual benefit from these valuable route assets.

o Valuation: Eastern apparently placed no value on the routes already transferred to Continental. The Central/South America route system, however, has an undetermined market value, and Eastern has no plans to give away or sell that system in the immediate future.

o Benefits: Continental gained international route rights through the acquisition of Eastern by TAC, rather than through the DOT carrier selection process.

o Union Argument: ALPA contends that Continental has supplanted Eastern on at least seven international routes, including Miami-London, for no financial consideration. Also, it notes that DOT has approved Continental's request for "co-certification" of all of Eastern's international routes, including its lucrative South American routes.

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Page 1 of 2

ACQUISITION OF BAR HARBOR AIRWAYS

o Description: In June 1987, Continental acquired 50 percent ownership in Bar Harbor Airways.

o Terms and Cost: Eastern paid Continental a fee of $1.5 million and assumed certain Bar Harbor debts as an inducement for Continental to purchase Bar Harbor. (See Appendix 343, Appendix 4, p. 3). Since the acquisition, Eastern has provided additional financial support through an initial line of working capital of up to $5 million (revolving credit at prime plus 1/2 percent); purchase of a long-term convertible note of $5 million at 8 percent; and additional short-term working capital funds of $9.8 million at 17.25 percent. In addition, Eastern and Bar Harbor entered into a 20-year commuter partnership.

According to Eastern's SEC Form 10-K of 1987, it has provided Bar Harbor with $13.3 million of credit under the revolving credit and short-term working capital funds. In addition, Continental paid Eastern a fee of $500,000 for an option to acquire the $5 million Bar Harbor convertible promissory note should it decide at some future date to increase its ownership beyond 50 percent. (Eastern 1987 10-K p. 48; Foret deposition TR 65, Shuyler deposition TR 86).

According to Mr. Foret, it would not have made economic sense for Eastern to acquire Bar Harbor because of labor contract provisions which would have required Eastern to bring Bar Harbor pilot salaries into line with Eastern's pilot salaries. (Foret deposition TR 64).

o Benefits: Bar Harbor's operations are coordinated with, and important to, Eastern's Northeast and Florida operations. It provides estimated passenger feed revenues of [redacted] annually. (Foret deposition TR 64-66; Eastern 1987 10-K, p. 48). Shuyler also states that Continental has a direct benefit from Bar Harbor's feed to Continental's expanded operations at Newark. (Shuyler deposition TR 83-84).

o Union Argument: ALPA has implied that Eastern advanced $13.3 million to Continental without consideration. (Touche Ross Analytical Synopsis Regarding Texas Air and Airline Subsidiaries April 26, 1988).

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Page 1 of 3

PURCHASE AND EXCHANGE OF NOTES

Texas Air Open Receivable Due Eastern

o Description: In connection with the acquisition of Eastern by Texas Air, Eastern incurred administrative expenses of $16 million. The accountants of Eastern and Texas Air advised them that if Eastern paid its own expenses, it would be obligated to expense the $16 million at the time of the transaction on its 1986 income statement. However, if Texas Air (as the acquiring company) paid the expense, it could be capitalized and amortized over the life of the assets related to the acquisition.

o Benefits: Texas Air benefitted in capitalizing the $16 million and amortizing that amount over 15 years. In return, Eastern received from Texas Air an open account for $16 million that is callable and non-interest bearing. (EA-3, p. 2; Foret deposition TR 56-58). Foret said that "That particular transaction essentially if Eastern collects it, is a gift from Texas Air to Eastern" because "there's no consideration for the $16 million" (Foret deposition TR 56).

o Union Argument: Labor parties question why this receivable has not been called by Eastern. (Attachment to March 17, 1988 letter to Congress entitled "Crisis at Texas Air Corp".)

People Express Notes

o Description: Eastern purchased $30 million (face value) of People Express Airlines' notes from Texas Air for $25 million, which was the market value of the notes at the time. These were unsecured notes, maturing in 2001 and paying an interest rate of 12 percent.

o Benefit: According to Mr. Foret, Eastern had substantial cash invested in short-term instruments returning 6 or 6-1/2 percent. This was a good opportunity for Eastern to get a significantly higher return on its cash.

o Valuation: Eastern also received letters from the investment firms of Morgan Stanley, Kidder Peabody and Drexel Burnham confirming the fairness of the purchase price. (EA-3, p. 8; Foret deposition TR 50-53).

o Union Argument: ALPA suggests that this was an unwise investment for Eastern.

Acquisition Note

o Description: In connection with the acquisition of Eastern, Texas Air purchased from Eastern 10,935,000 shares of newly issued Eastern common stock at market price (value of $68.3 million). As payment, Eastern received $34.2 million in cash and a note for $34.1 million. The note bears interest at the rate of 14.125 percent and matures on February 15, 1991.

o Benefit: Texas Air paid Eastern interest on this note of $4 million in 1986 and $4.8 million in 1987, and will pay $4.8 each year thereafter. (EA-3, p. 2; Eastern 1987 10-K, p. 74).

o Union Argument: ALPA suggests that this transaction was not in Eastern's financial interest.

Eastern's Issuance of $200 Million Notes and TAC's Partial Guarantee

o Description: In March 1988, Eastern issued private placement, second priority, secured equipment notes due in 1993 for the principal amount of $200 million. These notes carry an interest rate of 17.25 percent, with Texas Air guaranteeing two years of interest payments up to $69 million in order to facilitate acceptance of Eastern's offering in the capital markets. Eastern provided a cash security deposit of $40 million to Texas Air on which Texas Air pays Eastern interest at the market rate. Thus, Texas Air's risk is the difference or $29 million. According to Eastern's documents and the auditor's report, Mr. Lorenzo holds $500,000 of these notes. (EA 1987 10-K, p. 75; EA-3, p. 13; Eastern Airlines, Top Credit Relationships, Schedule I, page 0042774; Appendix 343, Summary p. 3).

RHW/

TRANSCRIPT OF PROCEEDINGS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AIR LINE PILOTS ASSOCIATION INTERNATIONAL,
Plaintiff,
v.
EASTERN AIR LINES, INC.,
Defendant.

Civil Action Number
87-2002

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO and ROGER CROGHAN,
Plaintiffs,
v.
EASTERN AIR LINES, INC., et al.,
Defendants.

Civil Action Number
88-0870

TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO and LOCAL 533, TRANSPORT WORKERS UNION,
Plaintiffs,
v.
EASTERN AIR LINES, INC.,
Defendant.

Civil Action Number
88-0864

DEPOSITION OF RAYMOND H. S. WRIGHT

Washington, D. C.

Thursday, November 10, 1988

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

- -x
AIR LINE PILOTS ASSOCIATION INTERNATIONAL, :
: Civil Action
Plaintiff, : Number
v. :
: 87-2002
EASTERN AIR LINES, INC., :
:
Defendant. :
- -x
INTERNATIONAL ASSOCIATION OF MACHINISTS :
AND AEROSPACE WORKERS, AFL-CIO, and :
ROGER CROGHAN, :
Plaintiffs, : Civil Action
v. : Number
:
EASTERN AIR LINES, INC., et al., : 88-0870
:
Defendants. :
- -x
TRANSPORT WORKERS UNION OF AMERICA, :
AFL-CIO, and LOCAL 533, TRANSPORT :
WORKERS UNION, :
Plaintiffs, : Civil Action
v. : Number
:
EASTERN AIR LINES, INC., : 88-0864
:
Defendant. :
- -x

DEPOSITION OF RAYMOND H. S. WRIGHT

Washington, D. C.

Thursday, November 10, 1988

Deposition of RAYMOND H. S. WRIGHT, called for examination pursuant to notice of deposition, at the offices of the Air Line Pilots Association International, 1625 Massachusetts

-- continued --

Avenue, N.W., Eighth Floor Conference Room, at 1:15 p.m. befor LEANNE P. DOTSON, a Notary Public within and for the District of Columbia, when were present on behalf of the respective parties:

JONATHAN A. COHEN, ESQ.
Senior Attorney
Legal Department
Air Line Pilots Association
International
1625 Massachusetts Avenue, N.W.
Washington, D. C. 20036
On behalf of Air Line Pilots
Association International.

DAVID C. TOBIN, ESQ.
RICHARD N. WIEDIS, ESQ.
Akin, Gump, Strauss,
Hauer & Feld
1333 New Hampshire Avenue, N.W.
Washington, D. C. 20036
On behalf of Eastern Air
Lines, Inc.

DON J. HALPERN, ESQ.
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D. C. 20004-2505
On behalf of Donald J. Trump.

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Raymond H. S. Wright	
by Mr. Tobin	

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P R O C E E D I N G S

Whereupon,

RAYMOND H.S. WRIGHT

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. TOBIN:

Q Would you state your name for the record, please.

A Raymond Wright.

Q Do you have a nickname, sir, known as Buz?

A Yes, Buz.

Q For the record, as a preliminary matter, Mr. Cohe has handed to me at the outset of the deposition here a packet of documents which I believe he indicated came from Mr. Wright's files; is that correct?

MR. COHEN: That's correct.

MR. TOBIN: These are pursuant to our document request of October 18, 1988; is that correct?

MR. COHEN: That's correct, as stated on the cover letter.

MR. TOBIN: Okay. We will take these up in the course of the deposition, to the extent possible.

BY MR. TOBIN:

Q Mr. Wright, have you ever been deposed before?

A No, I haven't.

Q Just as a couple of preliminary matters before we get started, the answers to the questions I put to you today are going to be under oath. Do you understand that?

A Yes.

Q The court reporter, obviously, will be taking down everything we say, so for the clarity of the record and to make things easier for her, if you will wait until I finish a question, she will be able to get that before you supply an answer, and I will afford you the same courtesy. That way the record will be clear. Do you understand that?

A Yes.

Q During the course of the deposition, if you don't understand a question, just say so and I will repeat it.

A Yes.

Q If you don't know the answer to a question just say so.

A Yes.

Q Also, if you feel a need to take a break at any time during the course of the deposition please say so. We will be glad to do that. Do you understand all that?

A Yes. I certainly do.

Q Okay. Mr. Wright, could you tell me who your present employer is?

A Eastern Air Lines.

Q In what position are you employed with Eastern Air Lines?

A I am a pilot.

Q What pilot position are you in?

A First officer, L-1011.

Q How long have you been in that position?

A Eight months.

Q Prior to that, what position did you hold with Eastern?

A First officer, A-300.

Q How long were you in that position?

A Four years, approximately.

Q How long have you been employed by Eastern Air Lines?

A I am in my 19th year.

Q Previous to your employment with Eastern Air Lines who were you employed by?

BY MR. TOBIN:

Q This was a transcript in which questions and answers were --

A Yes, a loose-page thing, but that's correct.

Q Was that the transcript from Mr. Bavis' depositic of Tuesday of this week?

A I think it was this week. I'm not sure of the day.

Q Aside from that document, have you looked at any other documents in preparation for this deposition here today?

A No.

Q All right. Now, you are a member of the Air Line Pilots Association; is that correct?

A Yes.

Q I'm going to refer to that as ALPA during the course of this deposition if that is okay with you?

A Yes.

Q How long have you been a member of ALPA?

A As long as I have been with Eastern, 18 or 19 years.

Q Do you hold any positions with ALPA?

A Yes, I do.

Q What position do you hold?

A Presently the vice chairman of the Eastern MEC.

Q How long have you been in that position?

A Approximately a month.

Q How did you become the vice chairman of the MEC?

A There was an election process which was held at the more recent meeting. The outcome of that was that I was elected.

Q Okay. Was that the meeting of the Eastern MEC that was held in Miami at the end of October, the last two weeks in October of 1988?

A That is correct.

Q Now, prior to your election as vice chairman of the Eastern MEC, did you hold any offices with the union?

A Yes, I did.

Q What position did you hold?

A The secretary-treasurer of the MEC.

Q How long were you the secretary-treasurer?

A Two years.

Q Were you elected to the position of secretary-treasurer in the same manner as you were elected t

A That was the extent. Bavis may have dropped in for a few hours one of the days. I vaguely recollect that.

Q Were there any others who were present who are not members of any of the Eastern unions?

A John Loomis spent some time with me.

Q Who is Mr. Loomis?

A I think we refer to him as counsel, local counsel. He is an employee of ALPA at the national level, a representative individual that is assigned to the Eastern MEC for legal support.

Q Anybody else besides Mr. Loomis present?

A Not that I can recollect, no.

Q Did this meeting last one day or more than one day?

A I think the particular one that I'm referring to I think was at least a two-day meeting.

Q What was discussed at this meeting, this two-day meeting?

A The union accordance agreement.

Q The union accordance agreement? Could you tell me what that is for the record?

A It was an agreement that the unions could work collectively, together, to help build a viable Eastern Air Lines, essentially. I do believe counsel has a copy of it.

Q All right.

A It is about a five-concept document.

Q Just for the record, what were the five concepts, as you understand them; without the document in front of you, obviously?

A Yes. They went through a profit-sharing concept, a cost reduction concept, an acquisition concept, a shareholders agreement-type of concept. They were all laid out in the document.

MR. COHEN: I object to any further questions on the union accordance agreement on the same basis that I have objected to the other questions with respect to third-party purchases. It is beyond the scope of the order and it is consistent with the position we have taken in response to your request for production of documents. There is no nexus that I can see between the union accordance agreement and the subject matter of this limited discovery which is the financial condition of Eastern and antiunion animus embodied in the chunks memorandum and the shuttle sale.

MR. TOBIN: There clearly is a nexus. Mr. Wright just testified that one component of the union accordance agreement was that of a cost reduction, and I am certainly entitled to explore that as that directly affects Eastern's financial condition.

BY MR. TOBIN:

Q Mr. Wright, how was the concept of cost reduction embodied in the union accordance agreement?

MR. COHEN: I'm going to instruct the witness not to answer any further questions in this line with respect to the union accordance agreement unless you can explain to me how that ties in with the financial condition as it affects the litigation we are in at the moment.

MR. TOBIN: Obviously, certainly, we are under no requirement to explain it to you, but I will, Mr. Cohen. That is that Mr. Wright just testified that the union accordance agreement discusses cost reductions. That impacts Eastern's financial condition and I would like to know about it.

MR. COHEN: I'm going to instruct the witness not to answer.

MR. TOBIN: Do I understand, then, that you will instruct him not to answer any further questions about the union accordance agreement?

MR. COHEN: That is correct.

MR. TOBIN: Let's take a short break.

(Recess.)

BY MR. TOBIN:

Q Before we took the break, just briefly before that you had stated that there were five components of the union accord. I think you identified four. I just wanted to get the fifth one. You identified profit sharing, cost reduction, acquisition, and shareholders agreement. Was there a fifth concept that was embodied in that document?

A It seems like there was, but I can't think of it right now.

Q And you signed the union accord for ALPA?

A I constructed it. I participated in the construction of it.

Q But actually the physical signing of it, did you sign it on behalf of ALPA?

A No, I did not. No.

Q Did anyone sign it on behalf of ALPA?

A Yes.

Q Who did that?

A Jack Bavis.

Q Was he in Miami at the time it was signed?

MR. COHEN: I object to this question and anything further in the line for the reasons set forth already on this record, and in addition, that we have gone through this exact testimony before Judge Parker in a hearing on the preliminary injunction. The union accord agreement was brought out, the circumstances of its signing are the subject of testimony in depositions, and the scope of discovery here is different. It is narrow. We are wasting everybody's time by pursuing the same lines of inquiry.

MR. TOBIN: Are you done?

MR. COHEN: Yes.

MR. TOBIN: Obviously, we disagree once again. I don't think we are wasting anyone's time. I have established the relevance. We will apparently leave that for the Judge to decide.

BY MR. TOBIN:

Q Have you ever discussed Eastern's financial condition with any of Eastern's creditors or lenders?

A No.

Q How about with any investment bankers?

A No.

Q Any representatives of bond markets?

A No.

Q Have you discussed Eastern's financial condition with any potential purchasers of the airlines?

A No. I mean, not in the context that you are asking.

Q I want to make sure we are clear on that. Is there some context in which --

A It has clearly been established where Eastern's financing and financial position is, and there are certain entities that have ideas about how it could be corrected, but we have not sat down directly discussing Eastern's financing, or its position as such.

Q What are the entities that have some ideas about Eastern's financial condition that you mentioned?

A We have already mentioned our consultant, Mr. Kupersmith, but some of these third-party groups have different ideas.

Q About the financial condition of Eastern?

A That's correct.

Q Who are these third-party groups?

DEFENDANT'S
EXHIBIT
31

ACQUISITION ACCORDANCE AGREEMENT

THIS AGREEMENT, made and entered into this _______ day of July, 1988, by and between (1) the Air Line Pilots Association, EAL MEC, hereinafter referred to as ("ALPA"); (2) the International Association of Machinists and Aerospace Workers, District 100, hereinafter referred to as ("IAM"); and (3) the Transport Workers Union, Local 553, hereinafter referred to as ("TWU"). ALPA, IAM and TWU are hereinafter referred to collectively as ("the Alliance"). ALPA, IAM and TWU are sometimes hereinafter referred to individually as ("Party") and collectively as ("Parties").

WITNESSETH:

WHEREAS, the three major unions referred to as the Alliance have demonstrated continuously since 1983 that their membership employed by Eastern Air Lines have cooperatively contributed with extensive wage reductions and productivity increases in an effort to achieve partial or full ownership of their airline, and

WHEREAS in an effort to make Eastern a competitive and profitable enterprise the employees have contributed more than a billion dollars in wages alone during the last decade, and

WHEREAS, the Alliance desires to enter into an agreement with a Financing Partner for the purpose of jointly forming an entity which will purchase Eastern Air Lines from Texas Air Corporation, or all of Texas Air Corporation, and

WHEREAS, the Alliance is willing and able to define the terms and conditions under which the Alliance is willing to act as a principal party, along with the Financing Partner, in the purchase of Eastern Air Lines, and

WHEREAS, the Alliance is willing and able to make certain promises and covenants that define the actions the Alliance is willing to undertake relative to the future operation of Eastern Air Lines, or other airlines.

NOW, THEREFORE, in consideration of the premises and of the mutual promises contained herein the Parties do hereby agree as follows:

1. DEFINITIONS

1.1. In addition to any other definitions contained elsewhere in this Agreement, the following terms shall have the following meanings unless the context otherwise expressly indicates:

A. "Financing" means that amount of cash, cash equivalent or any noncash payment or asset of any type which is provided or obtained, in any manner, by the Financing Partner, to undertake, in whole or in part, the purchase of Eastern Air Lines or any other airline company. Financing may be in the form of either equity or debt, or a combination thereof.

B. "Financing Partner" means any person, corporation, partnership, association, joint venture, trust or any other entity that purchases Eastern Air Lines, or any other airline company, in concert with the Alliance.

C. "Project" means any action, undertaking or activity of the Alliance and the Financing Partner, relating to and for the purpose of the purchase, in whole or in part, of Eastern Air Lines, or any other airline company, in which the Alliance is acting in the capacity of a principal party, along with the Financing Partner, to such action, undertaking or activity.

D. "Member Employee" means any employee represented by ALPA, TWU or the IAM, and any other non-contract employee groups who chose to become a member of the Alliance. It is the collective desire and intent of the Alliance that the company take all necessary steps to ensure that within six months of the acquisition of Eastern by the Financing Partner, all Eastern employees become members of the Alliance.

E. An "Active Member Employee" is defined as any member employee who was on active service on or after January 1, 1986 and who did not voluntarily sever his/her employment relationship with Eastern.

F. "Active Service" means all periods of employment by Eastern, and includes all periods of leave for union business, sick leave with pay, involuntary military or medical leave, and layoff, providing the employee returns to active employment with Eastern.

G. "Active Employment" means all employees who are paid a salary or wages for arvices performed for Eastern Air Lines.

2. LIMITING CONDITIONS

2.1. The Alliance shall have full and final approval rights of any subsidiary, corporation, partnership, association, joint venture, trust or any other entity has any equity interest in, prove to be an equity participant with or have an equity interest in the Financing Partner.

3. PARITY PROGRAM

3.1 The purpose of the Parity Program is twofold:

A. To compensate all member employees, as defined above, for accrued pay losses from January 1, 1986, defined as "the Shortfall" below.

(1) The "Shortfall" consists of the pay losses for each individual member employee, as measured by the difference between the Actual pay received and the pay based on contractual pay rates in effect on January 1, 1986 for the period from January 1, 1986 through the date of the acquisition of Eastern by the Alliance, plus the difference between the actual pay received and the pay based on the "Parity Pay Rate", as defined below, for the period from the date of the acquisition of Eastern by the Alliance through the date at which the pay rate reaches the "Parity Pay Rate". The payroll records of each member employee will include a Shortfall Account which will record his/her accumulated losses.

B. To eliminate the "Parity Deficiency", as defined below, through adjustments to on-going pay rates of all member-employees until such pay rates equal parity pay rates.

(1) The "Parity Deficiency" is defined as the difference between a member employee's actual pay rate at any point in time and the parity pay rate.

(2) The "Parity Pay Rate" for a job classification is equal to 103% of the Industry Average pay rate.

(3) "Industry Average Pay Rate" is defined as the average rate of compensation, including all pay-related items which affect W-2 compensation in effect for each job classification or its equivalent at the following major airlines: AAL, DAL, UAL, USA, NWA, PAA and TWA. This average shall be weighted by the employee count at each carrier in those specified job classifications.

3.2. The Industry Average Pay Rate will be based on the top pay rate for each job classification. The step increases up to top pay rate for each classification at Eastern Will be determined by the step increases contained in existing collective bargaining agreements at Eastern. Any remaining non-merging pay scales at the time of the acquisition of Eastern by the Alliance will be merged into their corresponding A pay scale. Each employee group will determine internally the manner by which their pay scales are merged.

3.3. "Parity Point" is that point in time when all Shortfalls have been paid and all member employees gave reached the Parity Pay Rate. Once Parity Point is reached pay rates will not drop below parity and the parties must meet within thirty (30) days to discuss further increases in compensation above parity.

3.4. The Shortfall will be made up in semi-annual payments out of the cost reduction program. Such semi-annual payments to each member employee will be determined by each member employee's proportionate share of the total deficiency accrued up to the point of distribution, i.e., an employee's pro rata share of the total Shortfall will determine that employee's share of the total distribution. The member employee's total outstanding Shortfall will correspondingly be reduced by the equivalent amount. the manner of the cash distribution will be negotiated between the company and each employee group.

3.5. The Parity Deficiency will be reduced through semi-annual adjustments to member employees' on-going pay rates. The aggregate semi-annual dollar amounts resulting from such pay rate adjustments will be equivalent to the semi-annualized value of dollar savings produced by all recurring CRP projects initiated since the inception of the program. These pay rate adjustments will be permanent increases.

3.6. Each job classification's shared of the aggregate pay increase will be determined by the amount of each member employee classification's semi-annual pay deficiency as a percent of the total pay deficiencies of all member employees. This percent is then applied to the total aggregate semi-annual pay increase for all member employees. The resulting pay increase for each job classification will then be converted into the corresponding pay rate increases for that classification.

3.7. It is understood that member employees must be in active employment with EAL to receive any Shortfall payments or Parity Deficiency adjustments.

3.8. Percentage increases in the Industry Average Pay Rate and the corresponding Parity Pay Rate for any classification will be automatically applied on a semi-annual basis to the pay rates of the corresponding classification at Eastern so that the pay rate at Eastern will not decline as a percent of Parity by virtue of increases in the Industry Average.

4. ACQUISITION INTEREST RESERVE ACCOUNT (AIRA)

4.1. Effective with the date of the acquisition of Eastern by the Financing Partner, Eastern will be authorized to withhold future wages paid to all member employees that are in excess of wages that were based on the contractual rates of pay in effect on January 1, 1986, excluding all compensation received from Parity Program Shortfall payments and profit and loss sharing.

4.2. The wages withheld under this agreement will be limited to a reserve amount of one hundred million dollars ($100,000,000). The withholding period will not exceed ninety six (96) months.

4.3. The funds withheld by the Company will be deposited monthly to a special interest bearing account referred to as the Acquisition Interest Reserve Account (AIRA).

4.4. These funds so accumulated will be used exclusively for the purpose of: 1) paying the interest cost on the acquisition loan in the event Eastern is unable to pay such interest out of normal operating funds, or 2) contributing additional amounts to the Parity Program. The Alliance representatives on the Board of Directors must consent to the use of these funds to pay the acquisition interest costs.

4.5. In the event the reserve amount of the AIRA has not been met and the Parity Program has resulted in adjustments to pay rates above the level of January 1, 1986, all monies corresponding to these pay rates in excess of January 1, 1986 will be paid into the AIRA and credited as employee contributions toward the reserve amount, as defined above.

4.6. Interest accrued by all funds in the AIRA will be deposited into the Account and will be credited to any deficiency in the AIRA. All interest accruing to these funds in excess of the reserve amount will be used to reduce the principal on outstanding debts of Eastern Air Lines.

4.7. Finally, following the maximum holding period of ninety six (96) months, all funds contributed by the member employees up to one hundred million dollars ($100,000,000) will be returned to the member employees.

5. COST REDUCTION PROGRAM

5.1. The Cost Reduction Program (CRP) shall be designed, to the maximum extent possible, to fairly credit and apply to the CRP Fund all productivity, cost savings, efficiency gains and added revenues, collectively referred to as "CRP gains", generated by member employees. The terms "productivity", "cost savings", "efficiency gains" and "added revenues" shall be defined respectively as increases in production or volume of work completed, direct reductions in anticipated costs, the value of increased utilization, and the value of added revenues directly resulting from CRP projects.

5.2. To implement this system, a structure shall be developed which will provide for Management and Alliance CRP Teams for each employee group who will generate productivity, cost savings and added revenues; monitor any program under their jurisdiction; and agree on credits for each Program. This joint effort shall be designed with the mandate to maximize cooperation, trust and credibility and minimize conflict and adversity. The Alliance CRP Teams will be appointed by the respective groups within the Alliance. Management will appoint their own CRP Teams to interface with each Alliance CRP Team. All costs relating to CRP teams will be paid for by the Company.

5.3. The Alliance CRP Teams will have complete access to all company records, information, data and management for the purpose of identifying, planning, implementing and valuing CRP projects. All management personnel and member employees at all levels shall have the absolute duty to cooperate in the implementation and continuing operation of the CRP.

5.4. One hundred percent (100%) of all CRP gains, including labor-cost and non-labor-cost savings (such as but not limited to materials, overhead, etc.), attributable to the Alliance work force, shall be wholly credited to the CRP Fund in a Pro Forma basis for the purposes of funding the Pay Parity Program described elsewhere in this document. The calculation of CRP gains will not include the costs of any capital investment required to implement the corresponding CRP project. Once all Shortfalls have been paid and all member employees have reached the Parity Pay Rate, all gains derived from this Program will be shared fifty-fifty (50-50) between Eastern and all member employees. The method of distribution shall be the same as that defined in the "Profit Sharing Program" described below. However, should the Company incur a net before tax loss in a year, the Alliance shall be responsible to cover 15% of this net loss to the extent of the funds generated in that year through the CRP.

5.5. CRP gains shall be quantified, evaluated and verified in a fair and equitable manner. This process of quantifying and verifying the gains will be performed by the CRP Teams within each employee group and a Company wide panel consisting of representatives of each employee group and management.

5.6. Any disputes concerning the value of a CRP Project will be referred to the company-wide panel and must be resolved within thirty (30) days. Failing to do so, a neutral will be appointed to resolve the dispute. The crediting of the gain determined by the final resolution of the dispute will be effective as of the date of the implementation of the project.

6. PROFIT AND LOSS SHARING PROGRAM

6.1. The Profit and Loss Sharing Program provides that fifteen percent (15%) of all before tax net profit will be paid to all member employees. Each member employee's share of the profit sharing payment will be proportionate to that employee's share of total employee pay for the equivalent annual period. The profit sharing payments will consist of one lump sum payment and paid at the end of each fiscal year. The manner of the profit sharing payment will be negotiated between the company and each employee group.

6.2. Distribution from the CRP and Profit and Loss Sharing Program cannot bring total compensation received in any year above one hundred sixty percent (160%) of wages received.

6.3. As specified in Section 5 "Cost Reduction Program", the Profit and Loss Sharing Program provides that fifteen percent (15%) of all before tax net losses will be offset to the extent of those funds generated by the CRP during the equivalent annual period. It is agreed that Alliance members will not be liable for any losses to the extent of the annualized value of increases in compensation given to non-member employees since the acquisition of the airline.

7. STOCKHOLDERS' AGREEMENT

7.1. It is the intent of the Alliance that the following concepts, provisions and requirements be made part of the "Shareholders' Agreement" as they relate to the "Member Employees":

A. The "Alliance shall at all times possess not less than:

(1) Twenty percent (20%) of stock ownership and voting power.

(2) Twenty percent (20%) of all new issues of stock.

(3) The right of first refusal of any or all sales of the Company, and Alliance Board of Directors Representatives must approve of any sale of Company assets which accumulatively add up to five percent (5%) or more of the Company assets in any twelve (12) consecutive months.

(4) The ability and right to rebuff any undesirable hostile take-over.

B. Prior to the payment of any dividends, all annual pension funding contributions must be made.

C. No dividends will be paid in the event funds must be drawn from the AIRA or in the event of a pretax loss in any years.

D. By contract not less than twenty percent (20%), representation on the Board of Directors shall be appointed by the employee groups with additional representation possible.

E. All member employee stock will be held in trust with provisions to be determined for in trust trading and with provisions for retiring employees and hardship cases to cash out.

F. Successful acquisition means that Eastern would include System One (SODA/EASI) or its equivalent.

G. Securities received by member employees as part of this program will include terms and provisions comparable to the terms and provisions of any securities currently held by employees which are surrendered as part of this transaction.

H. The Alliance representatives will be entitled to appoint the trustees for the trust.

8. TERM OF AGREEMENT

8.1. The term of this Agreement can be extended for any length of time upon the mutual written agreement of the Parties.

9. COVENANTS AND WARRANTIES OF THE ALLIANCE

9.1. In the event the Alliance enters into negotiations relating to the Project with any person, corporation, partnership, association, joint venture, trust or any other entity which considering becoming the Financing Partner, hereinafter referred to in this Section as ("Entity"), the Alliance hereby covenants to hold the name of such Entity in strict confidence and agrees to not disclose or introduce such Entity to any other person, corporation, partnership, association, joint venture, trust or any other entity that is not a party to or bound by this Agreement unless and until such Entity consents to such disclosure or introduction.

9.2. The Alliance hereby warrants that it is authorized and/or otherwise free to enter into and fully perform this Agreement and that, subject to the provisions of Section 2 hereof, the execution of this Agreement by the Alliance shall constitute a valid and binding Agreement of the Alliance enforceable against the Alliance in accordance with the terms herein.

9.3. The Alliance agrees that it will assist the Financing Partner to make a determination as to the viability of the Project by providing the Financing Partner with any and all descriptive and financial information relative thereto that is under the control of or otherwise available to the Alliance, such information to be accurate, complete, authoritative and verifiable, including, but not limited to, pro formas, cash flow analyses, financial statements, business plans and any other relative documentation that may be reasonably required. Any costs associated with such documentation or information shall be the sole responsibility of the Alliance.

10. INDEMNIFICATIONS

10.1. No Party shall have any liability whatsoever to the Alliance or the Financing Partner for any loss, cost, damage or expense which arises in connection with the performance of its duties and commitments (unless arising from gross negligence, malfeasance or fraud) with respect to any act performed by it in good faith and in accordance with the scope of this Agreement.

10.2 Each Party agrees to indemnify the other Party, and to safe them harmless, of and from anything done, or omitted to be done, by the indemnifier (either directly, or by agents, employees or other representatives) outside the scope of, or in breach of, the terms of this Agreement.

10.3 The rights and obligations of a Party as provided for in this Section 10 shall survive the termination of this Agreement.

11. GENERAL PROVISIONS

11.1. All costs associated with the implementation of these programs will be borne by the Company.

11.2. Entire Agreement; Modification; Waiver

A. This Agreement contains the entire agreement and understanding among the Parties with respect to the subject matter hereof and supersedes all prior understandings, if any, and there are no agreements, representations or warranties other than those set forth, provided for or referred to herein. Neither this Agreement nor any provisions hereof may be modified, amended, waived, discharged or terminated, in whole or in part, except in writing signed by the Parties. Any party may at any time extend the time for or waive performance by any other party. No such waiver of any provision or of any breach of or default under this Agreement shall be deemed or shall constitute a waiver of any other provision, breach or default nor shall any waiver constitute a continuing waiver.

11.3. Notices

A. All notices, requests, consents, demands, offers, acceptances, proposals, statements, documents and any other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered or if mailed by registered or certified mail, return receipt requested, and shall be deemed delivered on the date mailed or personally delivered if mailed or personally delivered on a banking day, or, if mailed or personally delivered on a non-banking day, on the next banking day after the date mailed or personally delivered (a banking day shall be a day when the head office of any commercial bank located in Miami, Florida is open for normal banking business).

B. All notices, requests, consents, demands, offers, acceptances, proposals, statements, documents and any other communications required or permitted under this Agreement shall be addressed as follows:

TWU: Mary Jane Barry
Transport Workers Union, Local 553
656 Minola Drive
Miami Springs, Florida 33166

ALPA: John J. Bavis, Jr.
Air Line Pilots Association, Intl.
201 Madeira Avenue
Coral Gables, Florida 33134

IAM: Charles E. Bryan
International Association of Machinists
& Aerospace Works, District 100
3026 N. W. 79th Avenue
Miami, Florida 33122

C. Designation of the party to be so notified or the address of such party for the purposes of such notice may be changed from time to time by similar notice to be effective ten (10) days after such change of address is supplied.

The foregoing constitutes the commitment entered into between the collective employee groups known as the Alliance to guaranteee their support and cooperation and to take whatever measures are necessary to assure the financial success of their employee owned airline.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date(s) indicated below.

Attest: THE ALLIANCE

By:____________________
Mary Jane Barry, President
Transport Workers Union
Local 553

Date Signed:________________

By:____________________
John J. Bavis, Chairman
EAL Master Executive Council,
Air Line Pilots Association

Date Signed:________________

By:____________________
Charles E. Bryan
President & General Chairman
International Association of
Machinists & Aerospace
Workers, Local 100

Date Signed:________________

L.1.9

LCF

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Air Line Pilots Association International, Plaintiffs) August 16, 1988
vs.) 6th Floor
Eastern Air Lines, Inc., Defendants.) Courtroom 19
) U.S. Court House
) Washington, D.C.
) Civil Action No. 87-2002

- - - - - - - - - - - - -

Transport Workers Union of America, Plaintiffs
vs.
Eastern Air Lines, Inc., et al., Defendants.) Civil Action No. 88-0364

- - - - - - - - - - - - -

IAM and Aerospace Workers and Roger Croghan, Plaintiffs
vs.
Eastern Air Lines, Inc., et al. Defendants.) Civil Action No. 88-0870

Before the Honorable Barrington D. Parker, United States District Judge, commencing at 10:00 a.m.

Hearing on Motion for Preliminary Injunction

Reported by:

Alfred A. Betz

DAWN COPELAND, Official Reporter
Room 6810, United States Court House
3rd and Constitution Avenue, N.W.
Washington, D.C. 20001
(202) 535-3482

APPEARANCES

On behalf of the Plaintiffs:

Jonathan A. Cohen, Esquire
James Linsey, Esquire
Joseph Guerrieri, Esquire
Samuel Issacharoff, Esquire
David Rosen, Esquire
Arthur Luby, Esquire

On behalf of the Defendants:

John J. Gallagher, Esquire
Michael J. Madigan, Esquire
Barry Simon, Esquire
David Boies, Esquire

P R O C E E D I N G S

- - - - -

THE COURT: Good morning, counsel.

THE CLERK: Civil Action Number 87-2002, Air Line Pilots Association International versus Eastern Air Lines, Inc. For the plaintiff Jonathan Cohen and James Linsey. For defendant John Gallagher.

Civil Action Number 88-364, Transport Workers Union of America versus Eastern Air Lines, Inc. For the plaintiff David Rosen. For defendant John Gallagher.

Civil action Number 88-870, International Association of Machinists and Aerospace Workers AFL-CIO versus Eastern Air Lines. For plaintiff Joseph Guerrieri and Sam Issacharoff. For defendant John Gallagher.

THE COURT: Counsel, before we begin the proceedings this morning, I want to make this announcement. That I will deny defendant's motion attempting to exclude the affidavits and the declarations of the plaintiffs in considering their motion for preliminary injunction.

I don't think that the case law supports their position as they proffered it.

A. They pay for different fliers. To my knowledge, they did not pay for these fliers.

Q. Do you mean that you know that they didn't or you don't know that they did?

A. I'm not sure if we --

Q. So they could have; is that right?

THE COURT: Do you want an answer or do you want to just cross over --

Q. I'm sorry.

THE COURT: -- what she's testifying to?

Q. Miss Barry, did you have a further response?

A. I'm not sure whether we paid for them or we did not. I did not authorize payment for them.

Q. Mr. Uline and Mr. Barber who are listed at the top of page 1 are the same gentlemen who prepared Exhibit Number 33 --

MR. LUBY: Objection. The documents speak for themselves.

THE COURT: All right.

Q. Miss Barry, let me call your attention to Exhibit 31 and ask you if you can identify this exhibit for the court?

A. Yes. It's the union accord agreement.

Q. And are there any signed copies --

THE COURT: Wait just a second. What was

your answer, Miss Barry?

A. It's the union accord agreement.

Q. Are there any signed copies of this document in existence, Miss Barry?

A. What do you mean by signed copies?

Q. Well, if you look at the last page, this document purporting to be an agreement is not executed, doesn't have any signatures on it. Are you aware of any versions of this document that were executed by anyone?

A. I'm aware that I signed a version of this myself but I'm not aware of the other signatures being on it.

Q. And are you aware that this document was produced to us in court yesterday?

A. I'm aware of that.

Q. Have you reviewed this document to see if it's consistent with a copy of the document that you signed?

A. I'm not sure whether or not it is consistent or not because I don't have a copy of the agreement that I signed, and this is an internal document within the unions. It has not been approved by our executive board or ratified by our membership.

Q. Who else signed it besides you, Miss Barry?

A. Nobody signed it. Nobody had signed the copy that I had signed.

Q. Do you know if Mr. Bryan or Mr. Bavis had signed?

A. I don't know that.

Q. Have you seen a copy signed by either of them?

A. No, I have not.

THE COURT: Now, what effect, or what purpose was served by your signing it? You say that it has never been adopted or endorsed by the union or by the executive board. What is the effect of your having signed it?

THE WITNESS: It's the intent of the unions to show that they can cooperate and work together if there is an internal union agreement only at this point. And if it were to be a binding agreement, I would have to have it approved through our executive board and then ratified by the membership.

THE COURT: So then you signed it, you felt that you could live with the principles or the statements that were made here?

THE WITNESS: Right. Then I would have to go to my executive board to get their approval and then it would have to go to the membership for final approval.

BY MR. GALLAGHER:

Q. Let me ask you to read the third and fourth whereas clauses on the first page to yourself to be familiar with them.

A. The third and fourth?

Q. Yes.

THE COURT: The third and fourth?

MR. GALLAGHER: The third and fourth whereas clauses, your Honor.

A. Yes.

Q. Have you had a chance to read those, Miss Barry?

A. I have.

Q. A preliminary question. This document speaks of the alliance and the alliance is defined in the introduction. What is the alliance, Miss Barry?

MR. LUBY: Objection. If the alliance is defined in the introduction, I don't see why she has to further define it.

MR. GALLAGHER: Simply trying to clarify the record.

THE COURT: Even if you do clarify the record, she is not speaking for the union when she signs this according to her own testimony. It is just her own personal position.

MR. GALLAGHER: Your Honor, she's speaking for the union as a witness on their behalf. We believe some inferences can be drawn from her conduct as a union officer.

THE COURT: I'm the one that draws the inferences, right?

MR. GALLAGHER: That's correct, your Honor.

THE COURT: I get the point you're making.

MR. GALLAGHER: Thank you, your Honor.

THE COURT: I don't know whether it's a point that I consider a strong point.

BY MR. GALLAGHER:

Q. Miss Barry, the third whereas paragraph reads, whereas the alliance desires to enter into an agreement with a financing partner for the purpose of jointly forming an entity which will purchase Eastern Air Lines from Texas Air Corporation or all of Texas Air Corporation. Was that whereas clause in the version that you signed?

A. To tell you the truth, I don't know since I don't have a copy of it.

Q. Well, is that your understanding of the -- one of the purposes of this agreement?

A. The purpose of this agreement was to have an internal document with the three unions to show a potential buyer that we would be willing to work together, the unions.

Q. It was to reflect to a potential buyer what you would be willing to do to assist that buyer in financing a takeover of Eastern Air Lines, was it not?

A. What we would be willing to do to help, yes.

THE COURT: Miss Barry, has the alliance ever entered into an agreement with a financing partner?

THE WITNESS: No, they have not.

THE COURT: Have they ever voted on the proposition?

THE WITNESS: No, they haven't.

THE COURT: Has your union ever voted on the proposition?

THE WITNESS: No.

BY MR. GALLAGHER:

Q. Miss Barry, has your union ever voted on the proposition of starting a coordinated campaign?

A. Yes.

Q. The entire membership voted on that?

A. No. The executive board.

Q. Who is Adam Sanford?

A. He is a consultant who is searching out a potential buyer for Eastern.

Q. Isn't it true, Miss Barry, that he is using the union accord document as a marketing tool to entice potential investors to make hostile takeover offers for Eastern Air Lines?

A. I'm not sure that he's doing that.

Q. But that's your understanding of what he was going to do with it, isn't it?

A. No. It's my understanding that what he is doing is finding potential buyers and he is confident after speaking to us that we can work together and he seems to have expressed an interest that buyers are interested in knowing if the unions can work together.

Q. Do you know if Eastern Air Lines is for sale, Miss Barry?

A. I don't know.

Q. Well, Miss Barry, one of the purposes of the coordinated campaign reflected in Exhibit Number 33 is to force Mr. Lorenzo to sell Eastern Air Lines, is it not?

THE COURT: '33?

MR. GALLAGHER: Yes, your Honor.

MR. LUBY: Objection. The document speaks for itself. I think we're getting to the point where he's arguing with the witness.

THE COURT: Can you answer the question, Miss Barry?

A. Could I have the question repeated please?

Q. One of the purposes of the coordinated campaign reflected in document number 33 is to force Mr. Lorenzo to sell Eastern Air Lines, is it not?

A. We would like somebody else to own the company besides Frank Lorenzo.

MR. GALLAGHER: Thank you. I have no further questions, your Honor.

THE COURT: Any questions?

MR. LUBY: No further questions.

THE COURT: Thank you very much, Miss Barry. You may step down. Mr. Madigan, who is your witness?

MR. MADIGAN: Mr. Phil Bakes is the witness, your Honor. I would anticipate the direct examination in the area of an hour.

THE COURT: All right. I will be leaving the bench just about that time.

MR. MADIGAN: We call Mr. Bakes as our witness, your Honor.

THE COURT: Surely.

Whereupon --

PHILIP BAKES,

a witness called for examination, having been first duly sworn, was examined and testified as follows:

THE COURT: Mr. Madigan, so we can do some shopkeeping at the same time, did you want to make a motion with respect to any of your documents used in the examination of --

MR. GALLAGHER: Yes, your Honor, I would like to offer each of those exhibits.

THE COURT: Very well. I will deny the request as far as 34 and 31 is concerned. I will admit 33.

MR. GALLAGHER: Thank you, your Honor.

(Defendant's Exhibit Number 33 was received in evidence.)

THE COURT: Did you designate the exhibits that you want to use?

MR. MADIGAN: Yes I have, your Honor.

THE COURT: All right.

DIRECT EXAINATION

BY MR. MADIGAN:

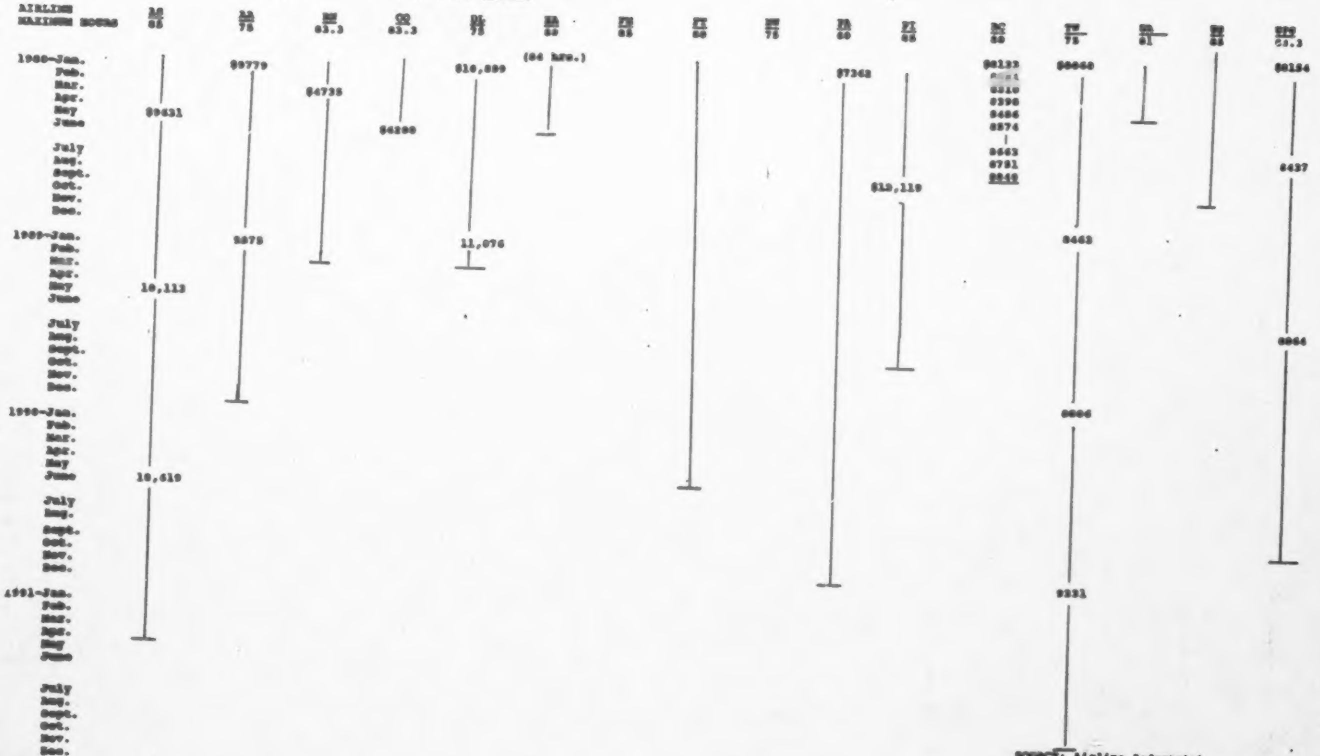
Q. Mr. Bakes, would you state your full name and position of employment?

A. My name is Philip Bakes, I'm president and chief executive officer of Eastern Air Lines.

PILOT MAXIMUM MONTHLY YIELDS-DOMESTIC
1/2 DAY, 1/2 NIGHT
B-727-200 CAPTAIN

AIRLINE	AS	AA	BN	CO	DL	EA	FM	FT	PW	PA	PI	RC	TW	UA	US
MAXIMUM HOURS	85	75	83.3	83.3	75	80	85	80	75	75	85	80	75	81	85
									(79 hrs.)		$9064	$7706	$7006	$9093	$11,056
1984—Jan.	$8639	$8743		$3885	$10,001	$6177	$9353	$9010	$10,027	$7178					
Feb.											(85 hrs.) 10,450				
Mar.		9026	$3583			(83 hrs.) 6898						6996			
Apr.				3730											
May	9304														
June															
July									(78 hrs.) 9,901		10,876				
Aug.				4167											
Sept.															11,490
Oct.															
Nov.															
Dec.													8673		
1985—Jan.					10,751	9401			(77 hrs.) 10,400						
Feb.						8093									
Mar.			3698						(79 hrs.) 10,079						
Apr.				4375		(84 hrs.) 8906				(80 hrs.) 7840					
May	9338														
June													9029	(85 hrs.) 10,200	
July		9307		5208											11,613
Aug.											11,210				
Sept.						9286									
Oct.							9447								
Nov.										8231					
Dec.													(88 hrs.) 7687		
1986—Jan.	8100			5223		(86 hrs.) 7793	9841	9304	(78 hrs.) 10,443					10,315	
Feb.															
Mar.			3985												
Apr.							9500			8643					
May	8903													(83 hrs.) 10,287	
June															
July															11,848
Aug.											11,763	6974 7044 7113			
Sept.															
Oct.	8137														
Nov.				5333											
Dec.								7000				7182 7281 7320 7389 7456 7327	7664		
1987—Jan.		9888				(84 hrs.) 7612		6143						10,026	
Feb.															
Mar.			4244												
Apr.															
May										9078					
June				5917										(81 hrs.) 10,370	
July												7690 7779 7867 7936 8044			11,944
Aug.							9638				11,061				
Sept.															
Oct.	9172									9478					
Nov.															
Dec.															

PILOT MAXIMUM MONTHLY YIELDS—DOMESTIC
1/2 DAY, 1/2 NIGHT
B-727-200 CAPTAIN

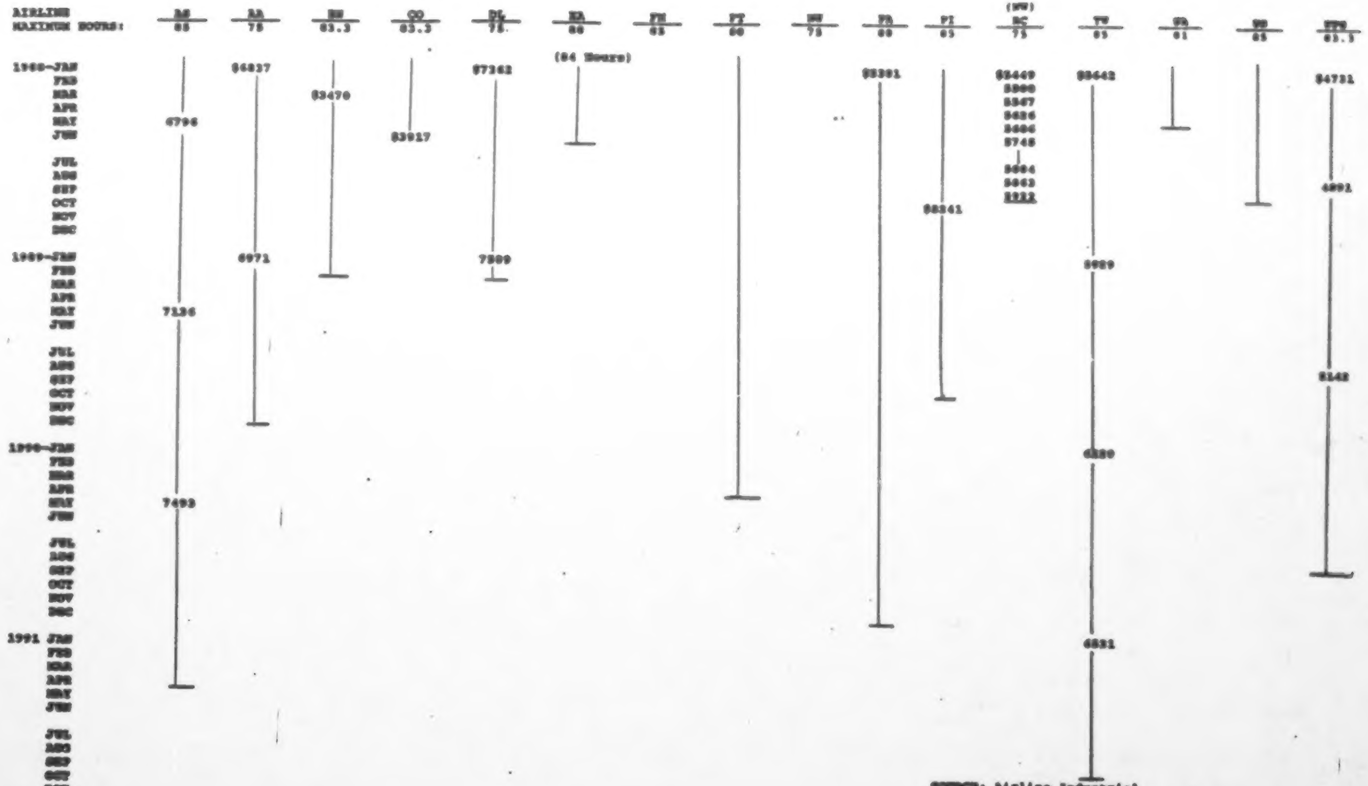


SOURCE: Airline Industrial
Relations Conference

PILOT MAXIMUM MONTHLY YIELDS-DOMESTIC
1/2 DAY, 1/2 NIGHT
B-727-200 FIRST OFFICER

AIRLINE	AS	AA	BN	CO	DL	EA	FH	FT	NY	PA	PI	(NW) RC	TW	UA
MAXIMUM HOURS:	85	75		83.3	75	80	85	80	75	75	85	80	85	81
1984-JAN	$6024	$6127		$2335	$6781	$4417	$6547	$6271	(79 Hours) $6619	$5034	$6700	$5163	$5464	$6367
FEB						(83 Hours)								
MAR		6311	$2625			4717								
APR				2500							(85 Hours) 7111			
MAY	6705											4626		
JUN														
JUL									(70 Hours) 6732					
AUG				2730										
SEP														
OCT											7394			
NOV														
DEC														
1985-JAN					7209	6732			(77 Hours) 7878					
FEB						5708							6071	
MAR			2704			(84 Hours)			(75 Hours) 7262					
APR				2888		6368				(80 Hours) 5488				
MAY	6587													
JUN														
JUL		6563		3333									6320	(85 Hours) 7147
AUG														
SEP						6640								
OCT							6713				7691			
NOV										5762				
DEC						(86 Hours)								
1986-JAN	5715					5572	6781	6471	(78 Hours) 7101	5844			(88 Hours) 5367	
FEB														
MAR			2926											
APR							6888			6137				7361
MAY	6283													
JUN														
JUL														(83 Hours) 7186
AUG														
SEP														
OCT	5741										7999	4673		
NOV												4719		
DEC						(84 Hours)		4910				4765		
1987 JAN		6703				5442		4321		6223		4811	5904	
FEB												4858		
MAR			3184									4904		
APR										6534		4950		7439
MAY												4997		
JUN				3583								5042		
JUL							6938							(81 Hours) 7269
AUG												5153		
SEP										6018		5212		
OCT	6472										8079	5271		
NOV												5331		
DEC												5389		

PILOT MAXIMUM MONTHLY YIELDS-DOMESTIC (PAGE 2)
1/2 DAY, 1/2 NIGHT
B-727-200 FIRST OFFICER

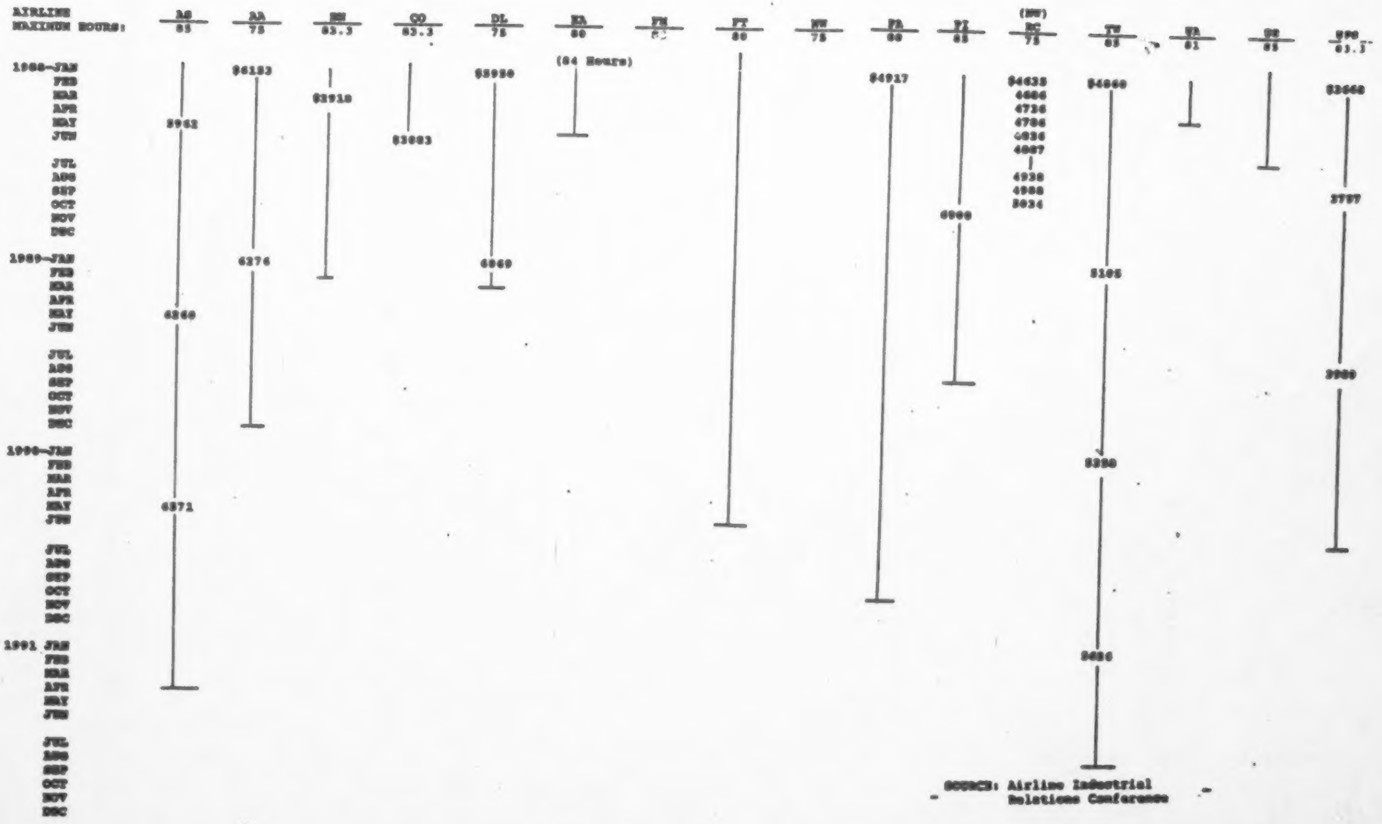


SOURCE: Airline Industrial
Relations Conference

PILOT MAXIMUM MONTHLY YIELDS-DOMESTIC
1/2 DAY, 1/2 NIGHT
B-727-200 SECOND OFFICER

AIRLINE MAXIMUM HOURS:	AS 85	AA 75	BN 83.3	CO 83.3	DL 75	EA 80	FM 85	FT 80	NW 75	PA 75	PI 85	(NW) RC 80	TW 75	UA 81	UP 85
1984-JAN	$3265	$5514		$2335	$5481	$3706	$5612	$5415	(79 Hours) $4061	$4427	$5623	$4392	$4707	$5593	$6302
FEB						(83 Hours)									
MAR		5608	$3208			3959									
APR				2500							(85 Hours) 5961				
MAY	3802														
JUN												3936			
JUL									(78 Hours) 3949						
AUG				2750											
SEP															
OCT											6199				
NOV															
DEC															6584
1985-JAN					5891	3641			(77 Hours) 4245						
FEB						4057							5230		
MAR			3375			(84 Hours)			(79 Hours) 4407						
APR				2800		5243									
MAY	3779														
JUN															
JUL		5907		2917									5445	(85 Hours) 6278	
AUG															6619
SEP	3613					3872									
OCT							5668				6447				
NOV															
DEC						(86 Hours)									
1986-JAN						4676	5725	5506	(75 Hours) 4244				(85 Hours) 4623		
FEB										(80 Hours) 5194					
MAR			3457											5457	
APR							5849								
MAY	3812														
JUN															
JUL														(83 Hours) 6315	
AUG															
SEP															6782
OCT	3036										6705	3978			
NOV												4014			
DEC						(84 Hours)		4284				4054			
1987 JAN		6022				4567		3752				4094	4742		
FEB												4133			
MAR			3677									4172			
APR										5484		4211		6535	
MAY												4251			
JUN												4290			
JUL							5974							(81 Hours) 6370	
AUG												4329			
SEP												4434			6829
OCT	3676										6772	4485			
NOV												4533			
DEC												4580			

PILOT MAXIMUM MONTHLY YIELDS-DOMESTIC (PAGE 2)
1/2 DAY, 1/2 NIGHT
B-727-200 SECOND OFFICER



SOURCE: Airline Industrial
Relations Conference

Mr. **Oberstar**. Our final panel consists of Ms. Mary Grace Shore, Ms. Ann Weikle, Mr. George Wheeler, Passenger and Sales Service Agents at Eastern Airlines, and Agent Communications Representatives; and Mr. Steve Glasgow, a pilot at Eastern Airlines.

The Chair would also observe that immediately following this testimony, as soon as calls can be completed to notify other members, we will proceed to markup of the legislation.

Ms. Shore, do you want to begin? You are the first name on our list. I don't know whether you have an arrangement among the four of you.

Ms. **Shore**. No we don't. In fact, we agreed not to prepare written testimony or a written entry into the record because we are the heart of the airline, and we speak from the heart today, and we hope that you will hear what we have to say.

Mr. **Oberstar**. That's why we are here, and that is why you are witnesses. Please proceed.

TESTIMONY OF MARY GRACE SHORE, PASSENGER AND SALES SERVICE AGENT, EASTERN AIRLINES, AND AGENT COMMUNICATIONS REPRESENTATIVE; STEVE GLASGOW, PILOT, EASTERN AIRLINES; ANN WEIKLE, PASSENGER AND SALES SERVICE AGENT, EASTERN AIRLINES, AND AGENT COMMUNICATIONS REPRESENTATIVE; AND GEORGE WHEELER, PASSENGER AND SALES SERVICE AGENT, EASTERN AIRLINES, AND AGENT COMMUNICATIONS REPRESENTATIVE

Ms. **Shore**. We appreciate the opportunity to be here. Ms. Weikle, Mr. Wheeler, and I are here because we are the elected communications representatives from our local station, and ultimately our region, and Ms. Weikle and I happen to be elected by the entire body of non-contract people who participated in that or public statements on their behalf.

I think it is somewhat appropriate to tell you a little bit about the background of the agent communications effort. That effort has been in place at our airline for roughly six or seven years—some five or six years, I guess, before Texas Air came on the property. Our activities have always been voluntary on our part, and they have always been in an effort to improve the level of communications between our work group and management on matter of policy, and certainly always with the passenger in mind and in an effort to improve our product wherever necessary through recommendations.

A number of us participated in cost-saving and revenue enhancement activities a few years ago during the same time of the much-publicized deficiency crediting team on the part of the unions, and were responsible for signing $24 million actual dollars in savings and revenue enhancements.

Our activities have always been and are now funded by the company because they are, in essence, part of our job and part of our efforts to improve the company.

I think it is somewhat appropriate that we are last here today. That is where we usually seem to fall in terms of people's interest. The impact on our group, I think, is best illustrated by yesterday's announcement, which it is interesting to me that this entire hearing proceeded from 10:00 this morning until now, and the only mention that I have heard of the 10,500 people who were put out of work by this effort was the 15 people that Ms. Slaughter mentioned. Mr. Gingrich has 600 people of our category who received out-of-work notices yesterday. No one has mentioned that here. You can understand our chagrin on that.

This is not an unemotional experience. This is not an unemotional issue. We think that people who have little enough confidence in the management of the company that they work for, who are so convinced that they are so immoral, should not have little enough integrity to cash their checks. They should not attempt to put 30,000 people—some of whom prefer to keep their jobs—out of work in a struggle that has come down to three unions against one man, and that is the way we see it.

We ask you to also be advised that heretofore the only employee that you have heard from today is an ex-employee whose total seniority and experience exceed the total, except for Mr. McDonald, of every panel so far that you have heard from today. I can understand why there is a great deal of confusion. I can understand why there is a lot of misinformation. I can understand why people would not be quite clear on what they have read and heard in the press.

Perhaps if you had heard from the rank and file employee, the line pilot who wants to fly, and the various individuals who really think that this airline is worth working for and worth saving, and have proven it through all kinds of circumstances——

The non-contract people that we represent are the people that you most often see when you fly on our airline. We are the ones that are standing there to straighten out when your secretary messes up your ticket or there is a misunderstanding with your travel agency, we are the ones who run down to the gate when you leave your checkbook at the ticket counter, we are the ones who get that message to you from your wife or your girlfriend or both when you haven't quite gotten it before you left your office, we are the ones who slide you right up into that first class seat even though you show up with the lowest cost coach ticket anybody can buy, and we do it with joy and pleasure, and we want to continue to do it, and we want to continue to do it under the banner that says "Eastern Airlines."

We do not think that any one work group has the right to put us out of work because they choose not to work for this company, and 10,500 of us are in that spot as of 4:00 yesterday. Excuse me. Yesterday it was only 7; today it is 10,500.

We ask that you consider that we are the unwilling victims of this struggle, that we are the people who pay bills. Many of the people who were laid off yesterday are single parent mothers who are existing on salaries from $18,000 to $24,000 a year.

For our employees in the State of Michigan, their children are eligible for free lunches under the program because of the salaries that they earn there. By the way, those are the people who have taken their 20 percent pay cut and had their vacations reduced. They continued to work for this airline in spite of that because they chose to do so.

We only ask that those people who do not choose to do that try not to take our jobs with them just in an effort to continue to prove a point on the part of organized labor.

Ms. Weikle has been displaced in her career several times, Mr. Wheeler is a longstanding non-contract employee of 22 years service, Mr. Glasgow is here not only in uniform, but in the opportunity to say that he has chosen to cross the picket lines and wants to keep this airline flying.

I can tell you that the majority of employees of this airline feel the same way, and were it not for the fear and intimidation and threats on their families that many, many people would be at work today, and perhaps this so-called "sympathy strike" could have been averted.

I can understand the confusion. I'm sorry that Mr. Molinari is not here. Ms. Slaughter, I understand your confusion about the message from the pilots, because I can tell you in my experience on a day-to-day basis that probably in the last year I have heard five pilots say that they would support an IAM strike. They have said repeatedly on a personal level—and, believe me, they are not shy about their points of view—that when they struck, it would be for ALPA, not for the IAM, and that is not what happened last Friday at midnight.

I heard the comments from members of the AFL-CIO, none of whom have ever worked for this airline, and choose and presume to speak for its employees, if Mr. Duffy—and I cannot endow him with the term "captain" because I think he denigrates the ranking—stands up one more time and says he speaks for the employees of Eastern Airlines I think I'll scream. He does not. He speaks for the people who speak for ALPA.

There is a great deal of confusion about whether people work for ALPA or work for their individual airlines. Perhaps Mr. Duffy's employees are the ones who are making threatening phone calls. He does not represent all of our captains and our first officers and our second officers. Their integrity prohibits them from doing those kinds of things, but their fear, because of those kinds of threats, has kept them from coming to work.

I'd like for Mr. Glasgow to make a statement at this time if he would care to, and I would be glad to take your questions.

Mr. OBERSTAR. Please proceed, Captain Glasgow.

TESTIMONY OF STEVE GLASGOW, PILOT, EASTERN AIRLINES

Mr. GLASGOW. I would just like to say that I thank you very much for allowing me to appear here. I am here representing the pilots that are flying the Eastern Airlines today.

We are flying because we don't feel that ALPA's so-called "sympathy strike" is, indeed, a sympathy strike. Rather, we believe it is an illegal strike.

I know how the vote was taken. I know the resolutions of the MEC. I am a member of ALPA at this moment—I doubt if I will be much longer. I have been for 23 years.

I don't believe that the membership of ALPA is operating on an even plane. They have lost sight of their objectivity because of one word—hatred. Hatred that has been bred by their own union and by the IAM. Hatred for Mr. Lorenzo.

As you know, when people hate they don't make good sense, they don't make good decisions. I think that is part of our problem here.

We are also working because we believe a limited operation will not only encourage other pilots to come back to work, as we agree with Mr. Armstead here that the pilots are the key to this whole situation at Eastern Airlines. Without the pilots in the cockpits, Eastern, we believe, is doomed to bankruptcy.

So we are hoping that a limited operation will give Mr. Lorenzo something to hang on to and hope that he can start to bring it back little by little by little. That is why we are flying.

I ferried the first flight out of Atlanta on Saturday morning at 5:30. I flew six shuttle legs Saturday, six Sunday, six Monday—what is today? Tuesday. Tuesday, two flights. And then I have been here ever since. I think I'm going to finally get a break and get to see my wife back in Charlotte, North Carolina, shortly.

Finally, we firmly believe the IAM and ALPA are not looking for a settlement, but rather to bankrupt this company and remove Mr. Lorenzo. I believe they have a coalition. This is what that document that you were having trouble entering into the evidence is pertaining to. It is a coalition to buy this airline. They don't have any intention of settling the dispute. They want to force it to bankruptcy because they can't buy it out of bankruptcy.

When it is bankrupt, they will be able to buy it at bargain basement prices. While it is a viable entity it costs them considerably more to buy it, and they cannot get a buyer to attach to their coalition.

But in bankruptcy, they will present a plan to the judges at the bankruptcy court of reorganization, under which they will offer massive pay cuts and work rule concessions that they refuse to give this management currently. It doesn't make sense to me.

Now, just to refute a couple of the things that were spoken here, I resent the fact that Mr. Peterpaul replies to a strike fund of Eastern Airlines. Since when is the working capital of a corporation of America a strike fund? That's all the money they have to operate on. That's not a strike fund. When it is over, we are out of business.

To the threats and intimidations of pilots, I think that the intimidation is tremendous, and that is why many of the pilots are not flying today. I, personally, have security on my house right now in Charlotte provided by Eastern Airlines because of the threatening calls on my wife, who has been home for the last four days all by herself. By the way, my wife is an agent for Eastern, as well, and she has been laid off.

The bottom line—and I think what we have lost track of and what you should get back to now—is whether or not you should allow a 60-day Presidential Emergency Board. That is what we were talking about. That's the decision you gentlemen have to make today.

I can tell you this: I might not know everything, but I have a little common sense. My daddy taught me you can lead a horse to water, but you can't make him drink. That is what you are faced with here, gentlemen. We have lead the horse to water at the trough here for 17 months with the IAM. For 17 months.

The contract that the pilots were offered, I have it in my suitcase over there in the corner. I'd be happy to fly for Eastern Airlines under those terms if that is their bottom line. I don't like it. I don't want to take another pay cut. There is no pay cut in it. There are work rules changes. There are productivity changes. But I'd be more happy to have a job under those terms than to be out of a job trying to bankrupt Mr. Lorenzo.

That's the way that I feel.

I hope that you will ask me some questions, and maybe I can help clarify some other issues for you.

Thank you very much.

Mr. **Oberstar**. Thank you, Captain Ms. Shore, for a very, very heartfelt testimony.

Ms. Weikle, do you have comments?

Ms. **Weikle**. Yes, I would like to make a comment.

TESTIMONY OF ANN WEIKLE, PASSENGER AND SALES SERVICE AGENT, EASTERN AIRLINES, AND AGENT COMMUNICATIONS REPRESENTATIVE

Ms. **Weikle**. I had a lot of sadness on Saturday when the pilots didn't show up for work. I have a lot of anger today. I have a lot of anger when I listen to union leaders here. This is union leaders against Lorenzo, union leaders who do not work for Eastern Airlines. I have a lot of anger when I see Mr. Duffy talk about our people at Eastern when he works with Delta. He is a Delta Airlines pilot and stands a lot to gain if Eastern goes under.

I have a lot of anger when I hear them talking about Texas Air and Lorenzo trying to run Eastern under. I have worked with Eastern for 11 years. I have family members that have been with them for 22 and 23 years. Eastern has always had a debt problem, they have always had money problems, they have had a labor problem.

When I listen to them talking about the good relationship with Borman I remember all the arguments and the hatred for Borman.

Steve is right: it is a hatred here. It has come down to a war between the union leaders and Lorenzo and they're not interested in getting any kind of settlement.

I firmly believe that all the unions want to see is to put Eastern into bankruptcy because they think they'll be able to buy it then. I firmly believe that.

I have talked to the people from all three unions before the strike who told me that they were threatened that they had better not cross the picket line. And I have talked to people since then who been threatened.

I have a lot of anger about everything that has happened at Eastern and that none of this seems to get on the news or in the media.

I thank you, also, for taking the time to let us come here and speak with you today.

Mr. **Oberstar**. Thank you, Ms. Weikle, again, for very heartfelt testimony and delivered from a very troubled spirit.

Mr. Wheeler.

TESTIMONY OF GEORGE WHEELER, PASSENGER AND SALES SERVICE AGENT, EASTERN AIRLINES, AND AGENT COMMUNICATIONS REPRESENTATIVE

Mr. **Wheeler**. Thank you very much for having us here.

I would like to say, very briefly, that last Friday was the fourth time since 1978—I have been with Eastern 23 years—that we have all rallied, got behind the company, and were ready to go do whatever was necessary to keep Eastern flying and produce a good product for the public.

We are all hard-working people. We love our company. I love Eastern. I have been with Eastern for 23 years. I couldn't count the bad moments I have had on one hand, probably. I love this company. I think we should survive, and I think you all should make a decision today to let the process go on, not interfere with us.

I think that IAM is doing nothing but buying time so they can maintain their higher wages, and we're going to be the one to pay the price. We're paying the price today, and we have no real say so in the bargaining.

Thank you.

Ms. **Shore**. I'm sorry that Mr. Lightfoot left. He made reference earlier today to a spat between husbands and wives, and I think that clearly the people who suffer in those kinds of disagreements are always the children, and the employees of this airline are the children of the airline, and those children's children, many of them are going hungry.

As you have already heard, many of them, no matter what the resolution or the decision, are never coming back to work for this airline.

I can tell you once and for all, make no mistake about it, there were tears, heartfelt tears, at every station yesterday among management and among the employees who were being told to go home.

I received no less than 25 phone calls between last night and this morning from employees asking what happened and why the pilots did this to them.

The pilots of this airline are held in high regard by everyone. Mr. McEwen, you know the kind of camaraderie that exists between an airline family. It exists throughout the industry. And you know, too, that these are the good old boys of the airline. We joke about them being overpaid, but everyone has immense respect for the responsibility and the training that helps them be able to meet the responsibility, and everyone feels that they have gotten a lot shorter at this airline in the last few days. The Eastern heart is broken, and it is breaking.

Mr. **Oberstar**. I think the case has been stated very well in your testimony. You certainly described the feeling of those, as you said earlier, who were left out because they are the non-bargaining unit employees.

Your reference to the pilots I think has been amply discussed by other witnesses and other members of the committee. Clearly the airline miscalculated and misjudged the reaction of the pilots, even though that signal had been coming out for quite some time.

It is not for us to discern here why they did what they did or what the causes were that impelled them. Our purpose here is to try to find a resolution. It seems to me that the best public policy interest is for us now to—the collective bargaining has broken down to the ultimate weapon which is a strike to create a framework through the law within which a resolution can be achieved.

It is true, you can take a horse to the water but can't make it drink. I think this is one process in which we can make it drink ultimately. It has been done before. I don't relish the prospect of doing it, but I think that this process does serve the best public interest. I would hope that we can come to that resolution.

Mr. GLASGOW. Could I answer that statement, please?

Mr. OBERSTAR. It wasn't a question.

Mr. GLASGOW. I feel very sincerely that this company does not have the cash to operate under those circumstances. I think it will be bankrupt because of that action, and that's why I'm here, as well.

Mr. OBERSTAR. It may well go bankrupt just because of the strike.

Mr. GLASGOW. Of course it may.

Mr. OBERSTAR. There is no guarantee that the company will survive the strike.

Mr. GLASGOW. It is very close to it now.

Ms. SHORE. Mr. Oberstar, lest there be any misunderstanding, no one on this panel—and, to my knowledge, very few people in our work group—object to the collective bargaining process. In fact, as agent communications representatives, we have to fight long and hard among those people in our ranks who might object to the fact that the only group who has yet to take a pay cut in our company is largely responsible for our problems.

We have always been very cautious not to make any statements of a public nature, either in this kind of forum, or to passengers on an individual basis, that reflect on that. And we have remained silent—through great effort, many times—during that process. Obviously the process has failed everyone.

Mr. OBERSTAR. I understand. And your——

Ms. SHORE. And also the integrity of the process must be in question if you have the kind of effort that started at this airline four or five months after Texas Air came on the property with slogans like "Stop Lorenzo," and comments coming out asking people to call and jam Continental phone lines and this kind of thing. You really have to reflect.

I don't know whether Mr. Lorenzo's integrity is in question, but on whether the climate was ever right for actual improvement and relationships between the two parties, and no one side can be blamed entirely for what has happened here. Equal blame must take place if blame is to be placed.

Mr. OBERSTAR. As far as the committee is concerned in the process we are engaged in, as I said at the outset, we are not here to fix blame. We are not here to assess the validity of statements of either side, but to find a process for resolution for the matter, and we have a bill that will lead us in that direction.

Your view, the panel's view, is that the strike should continue, that government should not intervene, and that the President should not call a Presidential Emergency Board and allow the strike to proceed?

Ms. SHORE. I cannot imagine why any rational person, given the evidence of what has transpired since Texas Air bought this company—incidentally, after Mr. Bryan's failure to agree to a pay cut—would imagine that 60 more days would make any difference. I can't imagine anything that has not been said that could be said that could alter the circumstances or the impressions——

Mr. OBERSTAR. Your answer is yes?

Ms. SHORE. Yes, it is.

Mr. OBERSTAR. Mr. Gingrich.

Mr. GINGRICH. First of all, let me thank the four of you for coming. I think your testimony is emotionally very powerful and is a very important part of the Eastern story.

Let me just ask, to recap for a second: would you just each tell me how many years of service you have with Eastern.

Mr. GLASGOW. I have had 22½. I am in my 23rd year right now.

Ms. SHORE. The same. I have 22½.

Ms. WEIKLE. I have 11 years.

Mr. WHEELER. I've got 23 years.

Mr. GINGRICH. So in every case you go back well before Lorenzo, and in many years you go back to the period when Borman was effectively turning the company around——

Ms. SHORE. Pre-Borman.

Mr. GINGRICH [continuing]. Very long stretch there in the 1970s.

Ms. SHORE. Floyd Hall was president when I came to work here, and the same for Steve.

Mr. GINGRICH. It does seem to me that, in that sense, the struggle to deal with how Eastern survives pre-dates Lorenzo and is just intensified under Lorenzo.

I also want to say, for the record, having represented a lot of folks in your category, that you represent the employees who sacrifice the most, who have been consistently loyal, and who I think really did belong to an Eastern family who, when I first started running for office in the early 1970's, there was a sense of morale that was very powerful and that has been battered very, very badly by the last 15 years, and particularly the last 7 or 8 years at Eastern.

I just come down to three questions, and I'll ask all three, and I'll be glad to give each of you a minute to summarize.

What we are faced with is how do we save Eastern. I'm not sure that is the job of Congress, and I'm not sure when I say "we" save Eastern I'm necessarily talking purely as a Congressman, but rather as a representative of an area that has almost 7,000 Eastern employees based at Hartsville Airport.

Second, what do you hope will happen? We are now in a mess. Even Mr. Onstad was accepting that they are not now where they thought they'd be at this stage and that it has gotten a lot more complicated.

Third, what do you wish we, in Congress, would do? Those are big topics, but it does seem to me that you have sacrificed of your time, you have come here, you represent a heart-felt plea by a large number of workers who deserve to be heard. I'd just like to turn it back to each of you for a minute.

Mr. **Glasgow**. I don't know if Eastern can be saved any more, sir. That's the first thing.

If we are going to try to save it, we are going to have to take it with the recognition that it is a hope and a prayer. If you want to try to do it under those terms, then I will be there any way I can to try to help. I just don't see that more of the same is going to do anything as far as solving the problem.

The IAM, if they are turned loose on this property again for another 60 days, will wreak havoc with the entire operation, as well as destroy valuable equipment and assets of this company. They have done it in the past.

Also, the cash reserve position of the company is in jeopardy here, and if they are forced to operate under those terms they will, of course, go bankrupt quicker.

It might just be that if the unions—and, in particular, ALPA—if their mode is to force a bankruptcy to get rid of Mr. Lorenzo, the threat of a strike in the past always worked. With Frank Borman he caved in and he gave up and he gave them what they wanted, even though he knew that he shouldn't. But with Frank Lorenzo, he's not giving in. So the threat of the strike is over with now. He didn't cave in.

Now it looks like because of that all of the unions are here saying, "Give us a PEB." That didn't work. So, you see, they are at kind of cross purposes there.

I can't think of anything else to say about that. But my hope, and the reason I am flying today, is that more pilots will come back to work daily and recognize what we are doing to ourselves here, and that little by little this airline can be put back together while the issue with Charlie Bryan is being handled in the legal manner through the mediation process and the Railway Labor Act. I'm not asking for a mediation board but referring to the mediation that has already taken place.

What could you do? I would have to say that the best shot that you had to effectuate a positive change at Eastern Airlines would be to try to convince the pilots and the unions that they need to be the ones to give here a little bit. Their contract is not in jeopardy in the first place. They haven't been released to mediation. Their contract is still valid. I'm still working under that contract.

I think if you were to look at those people and put some pressure on them perhaps you could effectuate some change here.

Ms. **Shore**. I'm afraid I have to agree with Steve. I wonder if it is not too late to try to save Eastern. I do not think that a 60-day delay, under the circumstances and with the material that we have to work with, does anything to really enhance the possibility of Eastern being saved.

As to what I would like to see happen in terms of anything that you can do or that anyone could do immediately, I think I would really like a serious observation of the kind of threats and intimidation that have kept people from all three work groups from crossing those picket lines. I would really like to see that come under scrutiny.

Everyone talks about it. I had the opportunity on Sunday, as I was working, to speak to a few reporters and I mentioned this to every one of them, and they all said, "Oh, really? Oh, my god. We had no idea." But not one of them made reference to it in their story. The only kind of thing you ever hear quoted from the noncontract people is how worried they are and what a travesty it is against all of us and that kind of thing.

The only kind of validity that seems to rest in some people's mind—and I'm sorry to say in some of your minds, just by what I have heard here today—comes from the leaders of organized labor.

So I guess what I would really like to see happen most immediately is for the pressure that is being put on the employees who would like to come to work—I know this from conversations that I have had with them as individuals and I know this from the people in my company who talked particularly to the pilots and the flight attendants on the telephone are being told when they call and ask them to come to work.

Ultimately, if we are going to play queen for a day, what I would like from the legislative body of this country, is for more pressure to be put on organized labor for them to come to terms with the reality of our economy and their impact on it. Because, quite frankly, I have learned a lot in the last year or so. I have learned what it means when people say that productivity is costing us money on an international basis as well as damaging our economy internally. I have learned what it means when people say, "Look what the labor unions did to Great Britain." I have learned what it means when people say that organized labor has shared in the good times and now they have to share in the bad times, and I believe that with all my heart.

I see very little pressure from the legislative body, particularly on the more liberal side, I'm sorry to day—and that is not a personal political statement. I see very little pressure from the Congress or from the Senate on leaders of organized labor to get their attitude in line with the realities of today's economy.

So if I ask for something from you, whether it is for Eastern or for the country, I ask for that, gentlemen. I ask for it.

Ms. **Weikle**. I have to agree with Steve that I don't know whether Eastern can be saved. Maybe if the pilots come back it can in some form. I certainly don't think a Presidential Emergency Board is going to help Eastern Airlines.

My understanding of the board is that you can only make recommendations, or you may choose to enact legislation. If you only make a recommendation to the unions, they still have the opportunity to go out on strike again, as was my understanding of the board.

I don't think any passenger is going to book Eastern Airlines for 60 days knowing there is still no resolution to the labor problem at Eastern.

So I think if we came back and flew we'd be flying empty Eastern planes for 60 days and certainly not bringing in any revenue.

I think I agree with Mary Grace. I think a lot of people have to realize the conditions have changed in this country. What is happening at Eastern isn't just an Eastern problem. It is happening at many companies throughout our United States. There are a lot of companies laying off people and a lot of companies having to take reductions in salaries. Fortunately, a lot of companies' unions are working together with them, taking reductions necessary to make their company profitable. I think if all the energy that had been spent by the unions in the last two years had been turned to make an Eastern Airlines profitable, maybe we wouldn't have had to come to the situation where they would have had to take a pay cut.

Mr. **Wheeler**. Naturally I agree with most of the panel. I am the eternal optimist. I do believe Eastern can be saved—maybe not at the size we are today. We can come back with a smaller carrier and work back as Braniff did when they went completely out of business. They were idle for a couple of years, and they came back, and now Braniff is a very hard competitor for Eastern.

Eastern had a lot of good people. We are all hard working. We are willing to work, and we can work if we are given the opportunity.

What I would expect this Congress to do is actually do nothing. Just leave Eastern alone. Let the process work. Don't interfere with an Emergency Board.

I don't think 60 days would make any difference. I agree with Ann. Who would book Eastern knowing that in only 60 days maybe we'll be out again, and then for who knows how long, and then what's next?

I think there comes a time when you just have to stop and take note of what has happened and then go on from there.

I don't believe any more time is necessary, whether it comes from Eastern or from the Congress.

I think if Eastern is just left to handle its own affairs with the IAM that it will work out for us all. I really do.

Mr. **Gingrich**. I want to thank the panel. You have been very, very effective and very articulate. I think several people, frankly, have told me that you were the best witnesses of the day. You should know you have been very powerful in your testimony.

Ms. **Shore**. Perhaps you will remember that in future hearings and try to hear from the employees instead of the labor leaders.

Mr. **Oberstar**. The Chair would observe that that is why you are here and that is why you are a part of the hearing today and we are hearing from you.

Ms. **Shore**. It is a first, Mr. Oberstar.

Mr. **Oberstar**. I think your presence is ample testimony to the fact that we want to hear all those parties that have a stake in the issue.

I hope that we can conclude any questions of witnesses here and proceed to markup. Are there other members who wish to ask questions or make comments?

Mr. **Kolter**. Yes. Mr. Chairman, I can appreciate the testimony of this interesting panel showing their loyalty to their company, but their testimony indicates clearly how important this legislation is, and I would certainly suspend any further interrogation on my part to start the bill markup.

Mr. **Oberstar**. Mr. DeFazio?

Mr. **DeFazio**. A quick question that I think can be answered very quickly, Mr. Chairman. I would like to ask Mr. Glasgow a few questions.

Mr. Glasgow, you did answer that you are a member of the union and have been with the company 22½ years. What is your rate of pay now and what was it before you gave concessions for the company?

Mr. Glasgow. Well, I can tell you I just filled out my tax return the other day and I have to pay about $8,000. I made $92,000 W-2 last year.

Mr. DeFazio. And that was after concessions to the company?

Mr. Glasgow. That was after the last rounds of concessions. Yes, sir.

Mr. DeFazio. What was your salary before?

Mr. Glasgow. At one time I made over $114,000 a year. But you have to recognize that I have changed categories and positions and the pay scales have changed in there, so those are not really apples to apples.

Mr. DeFazio. How would you compare your pay scale to Continental? Would you be willing to go work for Continental?

Mr. Glasgow. I don't see that I need to do that because my company has already offered me a contract—I have it in my suitcase right over there—that says I can work for Airlines for the same pay I work for them now.

I would like to clear up one little thing——

Mr. DeFazio. No. We've got to get through. I just want to ask these questions very quickly. I assured the Chair this would be quick.

In the case of the Trump takeover, were you involved in any negotiations with the company or Mr. Trump that you would go with Trump Airlines instead of remaining with Eastern.

Mr. Glasgow. Was I involved in any negotiations?

Mr. DeFazio. Did you intend to stay with Eastern or did you intend to go with Mr. Trump prior to his backing off on the deal?

Mr. Glasgow. Mr. Trump has backed off? I didn't realize he had done that.

Mr. DeFazio. Well, he has delayed the deal.

Mr. Glasgow. I had bid and was successfully a bidder in the Trump shuttle. Yes, sir.

Mr. DeFazio. Right. So you are castigating your fellow pilots at Eastern while you are abandoning ship with Mr. Trump.

With that, I conclude my questions.

Thank you, Mr. Chairman.

Mr. Glasgow. I don't see it that way, but——

Ms. Slaughter. Mr. Chairman, may I ask one questions?

Mr. Oberstar. First let me return to the other side.

The gentleman from Minnesota?

Mr. Stangeland. Thank you, Mr. Chairman.

It was very interesting to this panel and might be enlightening to you, that almost ten months ago today this committee considered H. Con. Res. 262 to express the sense of Congress that the Secretary of Transportation should conduct a full investigation in the management of Texas Air Corp. and Eastern Airlines since Eastern's acquisition by Texas Air Corp. At that time about 12 non-contract employees came to my office and they pleaded with me not to support that legislation, and I did not support it.

I am only sorry that this morning the dais was almost full of members of this subcommittee to hear Secretary Skinner, and when you started your testimony there were very few of us here.

I want to say that you have given the most powerful, most compelling testimony on behalf of your company that we have heard today. I'm just sorry that more people haven't heard it. You are speaking for 10,000 of these 30,000 people that we are concerned about, and I'm sure you are speaking for some of those 20,000 who are union employees, as well.

Ms. SHORE. Yes, sir.

Mr. STANGELAND. I just commend you for being here and commend you for some very, very powerful testimony. Thank you very much.

Ms. SHORE. Thank you, sir.

I can honestly say that I would have been willing to give that testimony under oath.

Mr. OBERSTAR. The chairman observes that while the dias was not full, there was a very substantial number of committee members here. Nonetheless, the message of the witnesses through the medium of television has been conveyed to millions of viewers all across the United States.

The gentlewoman from New York?

Ms. SLAUGHTER. Thank you, Mr. Chairman.

I, too, am quite moved by your testimony. Like everybody else in this country, we don't like people being intimidated or threatened about their work.

You mentioned you had to give-back pay more than one time?

Mr. GLASGOW. Yes, ma'am.

Ms. SLAUGHTER. How many times have you given back your——

Mr. GLASGOW. In 1983 I gave back 18 percent in a contract that the pilots group signed with the company, and three weeks later Charlie Bryan took a 32 percent pay increase. Subsequent to that he gave back 18 percent of that 32 percent. Then, in 1986—now, these are the most recent ones. There were some smaller ones, a five and a three, even before that. But in 1986 the Air Line Pilots Association agreed to a 20 percent pay increase, along with flight attendants and all non-contract employees. We subsequently took that to ostensibly try to keep the company from being sold at that time.

The IAM, again, of course, as you know, did not go along with that. And then subsequent to that they were given an eight percent pay increase in part of their previous contract.

Ms. SLAUGHTER. We are really running out of time, Mr. Glasgow. Just tell me how many times you have had to give back pay since 1983.

Mr. GLASGOW. About five.

Ms. SLAUGHTER. Five?

Ms. SHORE. We don't even count the times it just rounds off to 20 percent. I think for us it dropped down to about three different combinations of give-backs.

Ms. SLAUGHTER. About the same for the other two?

Mr. WHEELER. Yes, but actually it is misleading, because money was taken from us but not out of our paychecks. They gave us a 23 percent raise and took 20 percent back. We didn't really lose actual money that we were already being paid.

Ms. SLAUGHTER. But you never saw it, in other words?

Mr. WHEELER. We never saw it.

Ms. **Slaughter**. During that time do you have any indication or any figures on how much money management gave back?

Mr. **Wheeler**. I believe it is the same amount.

Ms. **Shore**. Yes, they took——

Mr. **Glasgow**. They took the 20 percent pay cut, as well. Yes, ma'am.

Ms. **Slaughter**. They took the same cut every time you took yours?

Ms. **Shore**. In some cases more, depending on their category.

Ms. **Slaughter**. No further questions.

Mr. **Oberstar**. The gentleman from Iowa, Mr. Lightfoot.

Mr. **Lightfoot**. Thank you, Mr. Chairman. I'll make it brief so we can get to the markup.

I'd like to associate myself with the remarks from Mr. Stangeland from Minnesota. Whether you folks are aware of it or not, shortly after Mr. Skinner's testimony the House went out of session and you have been live on C-Span. I've been watching up in the office and taking care of some other business.

I think the comments you have made have probably made more sense than anything we have heard here this whole day.

I made a bit of a flip remark at the opening that this was somewhat similar to a marriage that was on the rocks and now they are calling the mother-in-law to mediate. The question is, whose mother-in-law is going to be called in.

I'm left with the perception that this whole thing basically boils down to an argument between two huge, dynamic egos without any concern for thousands of other people that are going to be affected either directly or indirectly. I guess my sense is that the best way to do it is to let them slug it out.

Do you feel that what has happened at this point in time with the slowdown that this is adequate pressure on Mr. Lorenzo to possibly bring him to the table to talk this thing out? Earlier you mentioned Mr. Borman was of a little weaker heart and gave in a bit sooner. But dollars talk to this man, and if he is in a position to lose huge dollars, is this enough pressure? I don't know.

Mr. **Glasgow**. I think that the man has determined what he needs from the employee groups in order to be a successful airline; the employee groups just don't like what the numbers read. And I think that he fully believes he needs what he is asking for in order to be able to turn this airline around and make it one heck of an airline again. That's what he wants.

And if he sells short, he may not do it. If he gives in more and gives more back, he may not be successful in his real goal.

Mr. **Lightfoot**. So the interference with the government at this point would be a negative?

Mr. **Glasgow**. In my opinion, yes, sir. Whatever is going to be has got to be here now. It will just accelerate his bankruptcy.

Mr. **Lightfoot**. Thank you very much.

Mr. **Glasgow**. Thank you.

Mr. **Oberstar**. We have two additional members who wish to be recognized.

The Chair recognizes the gentleman from California, Mr. Mineta.

Mr. **Mineta**. Thank you, Mr. Oberstar.

Captain, I'm sorry I wasn't here for your testimony. I had to be at another subcommittee. But just listening to this last piece of it, you seem to indicate that Charlie Bryan took away something. Now, do you believe in the collective bargaining process?

Mr. GLASGOW. Yes, I do, sir.

Mr. MINETA. Well, what is it that Charlie Bryan took?

Mr. GLASGOW. I believe in the collective bargaining process to the extent that labor unions should demand everything that they can for their represented employees without bankrupting the company. Because ultimately if people have no job, then the demands were too severe and it was not effective.

Mr. MINETA. Captain, as I recall, Borman then used that money, turned around, and settled with the IAM.

Mr. GLASGOW. Yes, sir.

Mr. MINETA. That's not a taking. That is a give-and-take process in which there was a meeting of the minds. As far as I am concerned——

Mr. GLASGOW. You may think so, sir. I don't.

Mr. MINETA [continuing]. It may have been a bad deal, and I know when I rode the jump seat all I used to hear about was the complaint about give-backs the pilots gave and it went to IAM. But it was a give-and-take solution at that time.

Even the non-union folks had to give at that time. No question about it.

Mr. GLASGOW. Yes, sir.

Mr. MINETA. But it seems to me that is part of the give and take of the collective bargaining. Mr. Borman felt that was a good enough kind of a situation where he had to settle out; Mr. Bryan felt, on behalf of who he represented, that it was a settlement that he could go with. It just seems to me that is not a taking, in that sense.

Mr. GLASGOW. I think if you will read Mr. Borman's book he mentions in his book that he was told, "Frank, we're going to have to live to fight another day," and that's why he settled that night in 1983. He was going to live to fight another day, sir.

Mr. MINETA. You always do that every three years with another contract.

Mr. GLASGOW. But are unions demanding too much if we have to go through that at every stage of the game? Is our process effective if, today, our membership in our unions is down by over one-third? And it is, sir.

Mr. MINETA. Yes, but that is because you had someone who takes the computer reservation system, pays Eastern Airlines not fair market value, gives junk paper for it, and then the person sits here and says we gave an infusion of cash into Eastern Airlines. Give me a break. Come on.

Mr. GLASGOW. Well, sir. There has been a lot of testimony that shows that that sale was a very viable sale to Eastern, Texas Air, and everyone. I know that you don't agree with that, but I do.

Mr. MINETA. Absolutely not. I don't. Absolutely not. Not when you take a computer reservation system that is worth $350 million or $400 million and then give $180 million worth of paper for it that gets paid off over a period of time.

Mr. Glasgow. Even if we were to assume that was a terrible thing for Mr. Lorenzo to do, even if it was the wrong way for him to go, does it make it right for us to run him out of business and to run this airline down the drain? We cannot take that attitude, sir.

Mr. Mineta. It is a set-up. I know the difference between an upset and a set-up. What we've got here is a person who is setting up a company for an eventuality—for an eventuality for the people who work there to give back. You can't keep milking employees and stripping the company of its money-making assets: computer reservation system, wide body——

Mr. Glasgow. He has never milked the IAM once, sir.

Mr. Mineta [continuing]. Wide body airplanes, everything else. He has stripped Eastern of its assets. All Eastern has are old airplanes and good people.

Mr. Glasgow. Okay, sir. There is no doubt that he is burning the furniture to keep the house warm. There is no doubt about that. But that should tell you how serious the financial state of Eastern Airlines is. He has to burn the furniture to keep the house warm or he has got to infuse cash from his own pocket. I don't blame any businessman for saying he doesn't want to infuse more cash out of his pocket. Not in this business.

Mr. Mineta. Thank you very much, Mr. Chairman.

Ms. Shore. I have a concern to that point. If we have confidence in the FAA, which has total control over every airline, then we should have confidence in its findings, and Mr. Mineta was key in calling for an investigation—that cost us an additional few million dollars, by the way—which cleared that transaction and also investigated our books and found no wrongdoing. I'm a little confused. Do you not have confidence in the FAA?

Mr. Mineta. Absolutely have confidence in the FAA.

Ms. Shore. That was their finding.

Mr. Mineta. In fact, the Department of Transportation went beyond my bill and even went to Continental Airlines. My bill only had to do with Eastern Airlines.

Ms. Shore. I understand that.

Mr. Mineta. There must have been something suspicious, then, for the Secretary of Transportation to look at Continental Airlines. I didn't go that far.

Ms. Shore. If it wasn't part of the findings I don't understand why you expect rank and file employees to uncover something that——

Mr. Oberstar. The gentleman's time has expired. There are other members who wish to have opportunity, and we really want to bring this to a conclusion.

The gentleman from Ohio.

Mr. McEwen. Thank you, Mr. Chairman.

Could you help me in some explanation as to why you think the pilots didn't go to work this week?

Mr. Glasgow. Well, that's a very difficult one. I am very saddened by the fact that they didn't. I certainly thought that many more would have with as much at stake as we have here. And I would have to sum it to the one word I used before—hatred. I believe the hatred is, just like the letter said over there, to focus on Lorenzo and make him the object.

When they do that, when people start to hate, when people talk about a penny a gallon and all these terrible, disparaging things that this management has done, it makes them hate the person. When you hate the person, you lose objectivity. They have lost track of their objectivity, and that's where I think they were able to basically support it.

I also think that the hard line tactics of intimidation are a big factor.

Also, there is another feeling that I have, as a lot of my friends that didn't come back to work have said, "It's over with anyway, so what the heck? Why should I go against my union when it is going to be over with anyway?" So that certainly has a bearing on why there were not more pilots back.

Mr. McEwen. Did you want to comment?

Ms. Shore. Are you asking me the same question?

Mr. McEwen. Yes.

Ms. Shore. In speaking to the pilots that I have spoken to since this happened, I have to honestly say that perhaps I was really hopeful. It never entered my mind—again, to Mrs. Slaughter's concerns—for a serious instant that pilots who have consistently complained about the IAM taking a pay cut when they did not, and who have said repeatedly that they would never support an IAM strike in any real way, would fail to cross that picket line.

The first 24 hours I could kind of understand that as making a statement because, after all, they have been in a negotiating mode, themselves. And even on Sunday I was saying that maybe this has been good for everyone; maybe this has been an opportunity for management to take a look at what the employees really mean to them and vice versa; maybe it has been a good opportunity for the country, as a whole, to see what happens when a 60-year-old airline comes to a standstill and every plane is parked and every employee is looking for something to do for a living; maybe this has been a good learning experience for all of us.

And on Sunday, when the same thing continued to happen, and on Monday, I think really and truly I am still in a sense of shock.

The only answer that I have had on a personal level from the individuals that I have spoken to has been the fear that they have expressed because of threats—against their wives and families, in particular.

Mr. Oberstar. The gentleman from Pennsylvania, Mr. Kolter.

Mr. Kolter. Yes. The final question that I have: since there is so much hatred, threats, tremendous conflict between labor and management, is it safe to fly Eastern at all?

Mr. Glasgow. I wouldn't be doing it if it weren't safe, sir. I have flown safe airplanes for 23 years, and I'm not going to stop now.

Mr. Kolter. Well you certainly scare the devil out of me, I'll tell you that.

Mr. Oberstar. The gentleman from California, Mr. Packard.

Mr. Packard. Thank you, Mr. Chairman. It has been an excellent panel, Mr. Chairman, and one that certainly needs to be heard.

How much pressure, Captain Glasgow, did ALPA put on the Eastern pilots to avoid crossing the picket lines?

Mr. Glasgow. Tremendous pressure.

Mr. **Packard**. What type of pressure?

Mr. **Glasgow**. They have a phone bank and telephone trees and they call everybody and ask if you're going to wimp out on them or stay together. And then they have this other goon squad phone bank that calls my wife every night every half hour on the half hour and makes terrible remarks to her.

Mr. **Packard**. Did that come primarily from your own Eastern pilots or from other pilots?

Mr. **Glasgow**. They never identify themselves, sir.

Mr. **Packard**. What about other employees, Ms. Shore? Do you feel your testimony represents the majority of Eastern's employees?

Ms. **Shore**. Which part of my testimony?

Mr. **Packard**. The fact that they want to continue working and they want the strike to lead to a settlement.

Ms. **Shore**. Most assuredly. I think that is reflected in the numbers of people who have voluntarily left their home bases and gone to other cities to work in the last few days.

Mr. **Packard**. It is your general feeling, then, that most of the Eastern employees would not want this bill to be passed?

Ms. **Shore**. That is my feeling, sir, based on the input from the groups that we have represented. In fact, I think many of you received letters from those people indicating that they were not in favor of a PEB, and phone calls, as well. That is certainly my feeling.

Mr. **Packard**. Your testimony and those letters you feel represent the majority of the Eastern's workers?

Ms. **Shore**. Yes, sir, I do.

Mr. **Glasgow**. The non-contract workers.

Ms. **Shore**. Yes. I'm here speaking for non-contract. I wouldn't have any way of knowing in terms of other worker groups.

Mr. **Packard**. In your judgment do you believe that Eastern's baggage handlers are significantly paid more than other baggage handlers?

Ms. **Shore**. You may not believe this, but I can tell you from my heart of hearts it is that my judgment about what people get paid is always kept to myself for the simple reason that there are many, many people working for minimum wage who would think I was a fool for complaining about a 20 percent pay cut for what I do. I think most of you, having your pay discussed recently, would be sensitive to that, as well. I have always tried very hard not to be in the business of evaluating someone else's job and what they should be paid for it, because when you do that you are automatically asking to have it done to you.

I think——

Mr. **Packard**. I'm not asking——

Ms. **Shore**. I understand.

Mr. **Packard**. I'm asking in comparison to other baggage handlers if they are paid more?

Ms. **Shore**. That was not your original question. In comparison to other baggage handlers, yes, they are paid more than some baggage handlers.

Mr. **Packard**. That was my original question.

Ms. **Shore**. Okay. I misunderstood you.

Mr. **Packard**. There was testimony today that indicated that the unions have purchased, through a trust fund, a portion of Eastern, or that they have a significant portion of Eastern's preferred stock. In the case of a bankruptcy, would that preferred stock, as you understand it, receive preferential treatment in terms of distribution of assets?

Ms. **Shore**. I have no understanding about how that would work and, quite frankly, my impression is that the terms of the bankruptcy would make that determination.

Mr. **Glasgow**. I don't know, either.

Ms. **Shore**. That was the last comment I heard on it, and that has been probably eight to ten months ago from someone in that department.

Mr. **Packard**. I'm trying to see what kind of incentives there are for the unions to push this company to bankruptcy. That's what I'm——

Ms. **Shore**. I have an opinion about that, and I think it is an opinion shared by most of the non-contract people. I think the incentives are clearly beyond the scope of reason. I think the incentives have clearly been—and it has been stated publicly and in written literature. The incentive is to put Lorenzo out of business, and they are willing to bankrupt their company and to take it down—I have heard many people say, "I'd rather put it in the dirt than to give it to him."

Mr. **Packard**. One last comment, Mr. Chairman. It is a comment in the analogy of leading a horse to water but you can't make it drink. It appears to me that we can lead and force the horse to the watering trough, but in the process we may kill the horse.

Mr. **Oberstar**. Thank you. The gentleman's time has expired.

The gentleman——

Mr. **Mineta**. Mr. Chairman, a point of personal privilege.

Mr. **Oberstar**. Yes.

Mr. **Mineta**. I'm just wondering, if I might make a parliamentary inquiry, is it too late to ask that the witnesses be sworn in?

Mr. **Oberstar**. It is at this point. Since we did not empanel all witnesses under oath it is too late to do so.

Mr. **Mineta**. I thank the Chair.

Mr. **Oberstar**. Mr. Inhofe?

Mr. **Inhofe**. We have heard a lot of people testify today, and I have heard many more over the past couple of years in the short time I have been in Congress. I can't sit here and let it go unsaid that I appreciate your courage and your honesty. I thank you for your testimony today.

And I'd like to ask one specific question, Ms. Shore. What happened to your thumb?

Ms. **Shore**. Being the klutz that I am, I was trying to rescue my fellow employees here by bringing them a cup of soup and the top on the bottom cup collapsed and I was scalded coming up the steps of this revered building.

Mr. **Inhofe**. Thank you.

Ms. **Shore**. Thanks. No suit pending.

Mr. **Oberstar**. Well, the Chair can understand. I did the same thing to my hand a few years ago with a hot cup of cocoa.

Let's hope that's all that gets scalded in this process. [Laughter.]

We thank you very much for your testimony. It was very heartfelt and very straightforward. You speak with great depth of feeling on an issue that is of vital importance to you, and we thank you very much for being with us today.

Ms. SHORE. Thank you for your time.

Mr. GLASGOW. Thank you.

Mr. OBERSTAR. The subcommittee testimony has concluded. We will adjourn the hearing portion of the subcommittee's action.

[Whereupon, at 5:17 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

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